S. HRG. 100-736

NOMINATIONS—JUNE

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

JUNE 7, 1988

KAREN BORLAUG PHILLIPS, TO BE A MEMBER, INTERSTATE COMMERCE COMMISSION

JUNE 14, 1988

CHARLES E. COBB, JR., TO BE UNDER SECRETARY OF COMMERCE FOR TRAVEL AND TOURISM, DEPARTMENT OF COMMERCE; AND WENDY MONSON DEMOCKER, TO BE ASSISTANT SECRETARY OF TRANSPORTATION FOR PUBLIC AFFAIRS, DEPARTMENT OF TRANSPORTATION

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CONTENTS

	Page
Opening statement by Senator Exon	1
Opening statement by Senator Danforth	2
Opening statement by Senator Rockefeller	2
Opening statement by Senator McCain	3
Opening statement by Senator Packwood	4
Opening statement by the Chairman	5
Opening statement by Senator Gore	6
Opening statement by Senator Kasten	7
Opening statement by Senator Bentsen	14

LIST OF WITNESSES

JUNE 7, 1988

Phillips, Karen Borlaug	10
Biographical sketch	8
Letters of:	
June 20, 1988	19
June 20, 1988	25
June 20, 1988	31
Prehearing questions of the Majority and the answers	40
Prehearing questions of Senator Rockefeller and the answers	53
Posthearing questions of the Majority and the answers	72
Posthearing questions of Senator Kerry and the answers	80
Posthearing questions of Senator Breaux and the answers	84
Posthearing questions of Senator Danforth and the answers	86
Posthearing questions of Senator Pressler and the answers	87
Questions of the Chairman and the answers	465

JUNE 14, 1988

Opening statement by Senator Rockefeller	91
Opening statement by Senator Pressler	93
Opening statement by Senator Trible	94
Opening statement by the Chairman	95
Cobb, Charles E., Jr	103
Prepared statement	104
Biographical sketch	96
Letter of June 16, 1988	107
Graham, Hon. Bob, U.S. Senator from Florida, statement	91
Prehearing questions of the Majority and the answers	111
Posthearing questions of Senator Pressler and the answers	112

JUNE 14, 1988

Opening statement by Senator Rockefeller	113
DeMocker, Wendy M	117
Prepared statement	117
Biographical sketch	116
Durenberger, Hon. Dave, U.S. Senator from Minnesota, statement	114

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Missouri Highway Patrol Curbs 217 Unsafe Trucks, article	27
Truck Trauma, article	28

KAREN BORLAUG PHILLIPS, TO BE MEMBER, INTERSTATE COMMERCE COMMISSION

TUESDAY, JUNE 7, 1988

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:10 a.m., in room SR-253, Russell Senate Office Building, Hon. J. James Exon presiding.

Staff members assigned to this hearing: Robert Holleyman, staff counsel; Sheryl Webber Washington, professional staff member; and Ruth Johnson, minority professional staff member.

OPENING STATEMENT OF SENATOR EXON

Senator EXON. The committee will please come to order.

The Committee on Commerce, Science and Transportation meets this morning to consider the nomination of Karen Borlaug Phillips to be a member of the Interstate Commerce Commission. Ms. Phillips is currently minority chief economist for the Senate Finance Committee. Previously she worked as a staff economist for the Senate Commerce Committee and as an economist for the Department of Transportation.

The Commission is currently composed, as all know, of five Commissioners. Ms. Phillips has been nominated to replace Malcolm Sterrett whose term expired in December of 1987. The term for which she has been nominated will expire December 31, 1991.

Today's hearing comes at a particularly crucial time for the future of the Interstate Commerce Commission. The Senate must always take extra care in confirming a nominee for a high level position. We must ensure not only that the nominee has the expertise needed for the job, but also that his or her ideological stance will not interfere with the spirit and objectivity and the cooperation that the committee must always adopt.

The ICC must not lose sight of its important role in areas where regulation is needed to protect both the consumer and the well-being of the transportation industry. The level of debate on many issues at the ICC will intensify in the next few months, and many crucial questions will be made during the tenure of the next appointed Commissioner.

On a considerable number of issues there has been a three to two split, and in recent months, this has shifted in some cases to a two-two deadlock, which has led to few welcome compromises on issues.

The nominee before us today, if confirmed, will likely be a swing vote on upcoming matters before the ICC. In light of the debate on

the revisions to the Staggers Act, as well as the issues affecting the rail and the motor carrier industries, I am especially interested in hearing Ms. Phillips' views on both the role of the Commission and the transportation issues facing our country today.

With that, I will be glad to turn to any opening statements by any other members of the committee, and then we will introduce our colleague, Senator Packwood, whom we are delighted to have here, who I believe will make an introduction of Ms. Phillips.

Senator Danforth.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, thank you very much for chairing this hearing. I am delighted that the hearing at long last is taking place. Karen Phillips is one of our own as far as this committee is concerned. She served on the staff of the Commerce Committee for three or four years, beginning in 1982. I had the privilege of being the Chairman of the Surface Transportation Subcommittee when Karen Phillips was doing the staff work for that subcommittee, and she is just outstanding.

When she left the Commerce Committee, she went over to the Finance Committee, I prefer to think that it wasn't the fact that I was Chairman of the Commerce Committee at the time that led her to flee our quarters here, but she went over to——

Senator EXON. Can we stay away from controversial subjects here?

Senator DANFORTH. Then she went over to the Finance Committee with Senator Packwood and was the economist on the Finance Committee.

I have found her to be just an outstanding person in every way, very bright, very able, very energetic, and competent in every respect. I am delighted that the hearing is being held, and I look forward to reporting her nomination out of this committee at the earliest possible date.

Senator EXON. Senator Rockefeller.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. Thank you, Mr. Chairman.

For me, at least, if for no one else, this is an important moment in the recent history of the Interstate Commerce Commission. In response to very dramatic changes in our economy, public opinion and Congress produced a new legal framework governing our transportation system. A moderate consensus has emerged that supports a careful balance between regulation and deregulation.

The question for the ICC and for this committee is whether the Commission will reflect the balanced consensus approach to its mandate or whether the Commission will persist in what I perceive to be a more radical approach.

The fundamental premise of the new consensus on rail transportation is one of overall balance, consistent with the principles of a competitive economy. Where competition exists, this means deregulation prevails. Where competition does not exist, this means that the Commission acts to ensure conduct consistent with competition.

This new consensus simply follows a principle long settled in this country that monopoly power must yield to the yardstick of competition. Departure from this balanced approach imposes costs on our economy that we can ill afford. Years ago, transportation markets that could have been competitive were subject to excessive regulation. Today, some have pushed the pendulum perhaps too far in the other direction so that where competition is lacking, monopoly is allowed too free rein.

The result can be rail rates for hauling grain that are too high, rates for hauling coal that are too high, higher food bills and utility bills for consumers across the country, lost markets abroad, and in general, a less competitive American economy.

I hope we will keep in mind all of this, Mr. Chairman, as we consider nominations to the Interstate Commerce Commission. The present situation is one in which the Senate is called upon to perform its role in reviewing nominations at a time when the balance at the Interstate Commerce Commission has crucial implications for the future of our transportation policy. It is important for us to perform our role in such a way as to best maintain a Commission that will follow the public consensus on transportation. To ensure consistency between administration and the law, I believe it is essential that we also provide guidance and clarification through further legislation for whoever may be appointed.

I thank the Chair.

Senator EXON. Thank you, Senator Rockefeller.

Senator Stevens.

Senator STEVENS. Mr. Chairman, I have to go on to another meeting. I am just here to indicate support for this brilliant young woman who has earned this nomination and I think deserves our support.

Thank you very much.

Senator EXON. Thank you.

Senator McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator MCCAIN. Thank you, Mr. Chairman. I also would like to express my support for this obviously, in some respects, overqualified candidate. I am a little concerned about the enormous contributions she has made to the Republican National Committee.

Senator EXON. I said to stay away from controversial subjects.

Senator MCCAIN. I notice that in 1986 she contributed $50.

On behalf of Frank Farhenkopf, we would like to thank you.

Mr. Chairman, I think that this is an area of concern as our distinguished colleague Mr. Rockefeller just pointed out. We are in very crucial times, and I would suggest that perhaps Ms. Phillips' membership on this Commission would be of great assistance to this committee and to the Congress because, as she points out in her statement, she will be the only member of the Commission who has worked in the Congress. I think she has a clear understanding of the intent of Congress.

I have great confidence that she will be able to influence and perhaps educate other members of the Commission as to how the Congress intended these laws and regulations to work. I look for-

ward to the opportunity of working with her, as I know Senator Rockefeller and others do, as we address some of the very serious issues concerning rail regulation that lie before us.

In fact, I believe we are having a hearing in the next couple of days on CURE, and I suggest that with a more responsive Commission, we would not be in some of the gridlock we are in on some of these issues.

So congratulations, Ms. Phillips. I look forward to supporting your nomination, and hope we can get it approved as soon as possible.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator McCain.

Senator, do you have an opening statement?

Senator KASSEBAUM. Thank you. I am sorry to be late, Mr. Chairman. I will just wait until later.

Thank you.

Senator EXON. Thank you.

I am pleased now to call upon the junior Senator from Oregon, Senator Packwood, former Chairman of this committee.

We are glad to have you here, Senator.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. Mr. Chairman, thank you very much. There is no one, no one whose nomination for any position I could endorse more enthusiastically than Karen Phillips. We all know her on this committee. She also had a background of five years at the Department of Transportation. In fact, she was there when our fellow Committee member, Senator Adams, was then Secretary of Transportation. She served under Neil Goldschmidt, my fellow Oregonian, when he succeeded Brock Adams, and was there from 1977 through 1982, and was particularly involved in 1980 in the truck deregulation effort, one effort that I think almost without exception, very few exceptions, has worked out without much complaint and to great benefit to shippers, consumers and to trucking companies truly interested in competition.

For that effort she received the 1980 Secretary of Transportation's Award in recognition of her exceptional contribution in achieving the President's truck regulatory reform goals. She has received outstanding performance awards at the Department of Transportation in 1978, 1980 and 1981, and special achievement awards in 1978 and 1980.

So she comes not from a background just in Commerce, knowing transportation, but from the Department of Transportation.

She came to us in 1982 from the Department of Transportation, and as all of you are familiar, stayed on this committee for three and a half years in a variety of significant, important positions involving transportation. Then I stole her away when I became Chairman of the Finance Committee and moved her over there to serve as the principal economist. I might emphasize she is an economist, not a lawyer which although I am a lawyer, I count as a plus rather than a negative.

The toughest job she ever had, in my judgment, did not involve transportation and only marginally involved economics. To her,

during the Tax Reform Act of 1986, fell the task of handling the Members' requests for transition rules, and it is one thing if you are a Member of Congress to attempt to explain why we took away the investment tax credit or capital gains. That happened all over the nation, and maybe there is an up side or a down side, but at least a Member did not feel that he or she was singled out.

But when the Member comes with one request for a transition rule for his or her business and does not get it, and thinks that some competitor did get it, that is an infinitely more difficult situation for the Member to explain than why the investment tax credit was eliminated.

Karen handled in a very short period of time, because you do not get these requests until people realize the law is going to be changed—she handled thousands of these requests from Members, and Members personally calling her up, pleading on bended knees, please give me a year, give me two years, my constituent needs it—we handled them absolutely exemplarily. A few complaints, yes. You could not handle that job without complaints. But in a short period of time to handle, as I recall, 2800 to 3000 transition requests, of which we granted about 600, and to tell the other 2400 you do not get them, and to tell them kindly and pleasantly I thought was an act of diplomacy that would serve any government civil servant well, whether they are here, on the Interstate Commerce Commission or in some other position.

So Mr. Chairman and my fellow members of this committee, I can assure you this woman can do anything. She can do anything well. I have seen her handle everything, and everybody, and I have no complaints, and there is no one, as I said at the start, that I can endorse more enthusiastically for any position, but especially for the Interstate Commerce Commission, because what the Chairman said, what Senator Rockefeller said is true. There is no one I can endorse more highly for that position in a very sensitive agency at a time of dealing with very sensitive issues.

I thank the Chair, and I would like to come up and join the committee for the remainder of the hearing.

Senator EXON. We would be very happy to have you up here, Senator.

I have an opening statement from the Chairman, Senator Hollings, and also Senators Gore and Kasten—which I will include in the record.

[The statements follow:]

OPENING STATEMENT BY THE CHAIRMAN

This morning, the Commerce Committee is conducting a hearing on the nomination of Karen Borlaug Phillips to serve as a member of the Interstate Commerce Commission (ICC). The position for which Ms. Phillips has been nominated is a critical one. If confirmed, Ms. Phillips would serve through 1991 and may likely be a pivotal vote in a number of key matters before the Commission.

The ICC has received considerable scrutiny in recent years, much of it centering around the Commission's implementation of the Staggers Rail Act of 1980. Controversy over the way in which the ICC has implemented the Staggers Act has led to calls for legislation to revise the Act. While I personally do not believe there is a current need for changes in the Staggers Act, I cannot endorse all of the Commission's actions in the rail area. The Commission has been too slow to act in certain instances to protect the interests of captive and other shippers. However, I believe the Staggers Act affords the ICC the flexibility to adjudicate matters in a manner

which would ensure that shipper and carriers interests are properly balanced. I will be carefully looking at Ms. Phillips' testimony to assure myself that she is the type of nominee who, if confirmed, would be sensitive to the concerns that have been raised in this area and who would seek to properly balance shipper and carrier interests.

In looking at Ms. Phillips' responses, I will also pay particular attention to her views on motor carriers. One of the primary roles with which the Commission is charged relates to its implementation of the Motor Carrier Act of 1980. It is important for me to know that prospective members of the Commission are committed to fulfilling the Commission's regulatory responsibilities as Congress intended. The ICC is charged with carrying out our nation's transportation laws, not making them. I will consider the nominee's views for assurances of her commitment to enforcing our motor carrier regulations.

Finally, let me say that it is a pleasure to have Ms. Phillips before the Commerce Committee. Karen Phillips served as a staff member on the Senate Commerce Committee from 1982 to 1985, prior to her departure to serve on the staff of the Senate Finance Committee. All who worked with Karen both within and outside of these committees speak highly of her intelligence, integrity and character. This is certainly a high commendation for any individual and one for which Ms. Phillips should justifiably be proud.

I look forward to the nominee's testimony.

Opening Statement by Senator Gore

Mr. Chairman, I appreciate the opportunity to share my thoughts on the Interstate Commerce Commission with the Committee and especially with Karen Phillips, who has been nominated to be Commissioner of the Interstate Commerce Commission. I particularly welcome this opportunity to impress upon Ms. Phillips, as a possible ICC Commissioner, the urgent need for reform at the Commission. Reform is certainly one of the most pressing problems facing the ICC as well as the rail and shipping industries. I hope to see Ms. Phillips demonstrate the capacity for active leadership on this issue during the course of this hearing, but more important, during the course of her tenure at the Interstate Commerce Commission.

The Staggers Act changed the rail industry in this country and changed the ICC's regulatory role. I opposed the Staggers Rail Act of 1980 which partially deregulated the rail industry and created major problems for some short-line railroads and for shippers of bulk products. This deregulation resulted in thousands of miles of abandoned track across the country. I voted against the legislation, opposing this wholesale abandonment of rail rate regulation as potentially calamitous for shippers throughout the country—a concern that has been born out by skyrocketing rail rates for these captive shippers. In both the 99th and 100th sessions of Congress, I have cosponsored legislation to reform the ICC's practices in determining reasonable rates for captive shippers.

In enacting the Staggers Act, Congress did direct the ICC to ensure that captive shipper rail rates are "reasonable." Thus, Congress gave the ICC broad discretion in protecting captive shippers against rail price-gouging.

Unfortunately, the ICC has abandoned its responsibility to protect captive shippers, consumers, utility ratepayers, and taxpayers. The ICC has abused its discretionary authority in the areas of captive shipper rates and competitive access. Since the enactment of the Staggers Act, the Commission has not carried out its duty to protect captive shippers from instances of abuse of railroad monopoly power. Not until 1986 did the ICC grant any final rate relief to a captive shipper based on Staggers Act standards, and only then in response to intense Congressional pressure.

In the last few months, both sides on this issue have come much closer to an agreement on compromise legislation. Under Senator Rockefeller's leadership, proponents of ICC reform have seen significant progress on this legislation. As evidence of the progress on this issue, Chairman Hollings has agreed to hold a markup on this bill in the next few weeks. In addition, three of six major railroads have expressed their willingness for a negotiated compromise to resolve this issue. We have come far in these negotiations for a compromise, and this bill offers the best chance for more reasonable rail regulation at the Interstate Commerce Commission.

It is time to pass legislation to bring an end to price-gouging by rail monopolies and give consumers the benefits they deserve. I urge Ms. Phillips to take these words to heart. Because this issue is so important at this juncture in the ICC's history, Ms. Phillips' views on this issue will clearly affect my decision to support her nomination. But equally important, I urge this Committee no longer to put its trust

in the ICC to enforce reasonable rates for captive shippers but to pass quickly legislation that spells out more specifically fair treatment for captive shippers.

OPENING STATEMENT BY SENATOR KASTEN

Mr. Chairman, thank you for calling this hearing on Karen Phillips' nomination to be a Commissioner on the Interstate Commerce Commission.

This is a critical time for the Interstate Commerce Commission. By January 1 of next year, the terms of three of the five sitting commissioners will have expired. We are going to need quality people to fill these slots.

My review of Karen Phillips' background indicates she is a strong candidate for one of the commissioner slots. An economist by training, she has worked and written extensively on transportation issues for a ten year period. She has worked in the executive branch and for Congress. Her Hill experience has made her sensitive to the fact that those administering the law must be responsive to the goals Congress had in writing the law and to congressional oversight.

Thank you again, Mr. Chairman, for calling this hearing. I hope we can consider Karen Phillips' nomination at the Committee's next markup.

Senator EXON. Ms. Phillips, welcome, and we would be pleased to have any opening statement that you have, and then I am sure we will have some questions.

I will include your biographical sketch at this point.

[The biographical sketch follows:]

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN
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United States Senate

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: PHILLIPS (Last) KAREN (First) BORLAUG (Other)

Address: 1245 Portner Road (Current residence) Alexandria, VA 22314

Senate Committee on Finance (Business) Washington, DC 20510

2. Position to which nominated: Member, Interstate Commerce Commission

Date of nomination: February 29, 1988

3. Date of birth: October (month) 1 (day) 1956 (year)

Place of birth: Long Beach, Calif.

4. Marital status: Married

Full name of Spouse: Laurence Theodore Phillips

5. Names and ages of children: None

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Catholic University of Puerto Rico, Ponce, Puerto Rico	1973-1974	none	n/a
University of North Dakota, Grand Forks, ND	1974-1977	B.A.-French & Spanish B.S.-Economics	5/1977 8/1977
George Washington University, Washington, DC	1978-1980	none (graduate work in Economics)	

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
7/1977	10/1978	U.S. Department of Transportation, Office of University Research	400 Seventh St., SW Washington, DC 20590	Research Asst.
10/1978	6/1982	U.S. Department of Transportation, Office of Industry Policy	400 Seventh St., SW Washington, DC 20590	Economist

From	To	Name of Employer	Address	Type of Work
6/1982	11/1985	U.S. Senate, Committee on Commerce, Science, and Transportation	Washington, DC 20510	Professional Staff Member (Majority)
12/1985	1/1987	U.S. Senate, Committee on Finance	Washington, DC 20510	Tax Economist (Majority)
1/1987	present	U.S. Senate, Committee on Finance	Washington, DC 20510	Chief Economist (Minority)

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

American Economic Association (1980-present)

Tax Coalition (1986-present)

Transportation Research Forum (1982-present); National Secretary: 1982-1983

Women's Transportation Seminar (1979-present); Legislative Chair (Washington Chapter): 1983

Capitol Hill Squash Club (1986-present)

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Secretary of Transportation's Award for Meritorious Achievement -- 1980

3 Outstanding Performance Awards, U.S. Department of Transportation -- 1978, 1980, 1981

2 Special Achievement Awards, U.S. Department of Transportation -- 1978, 1980

Phi Beta Kappa (1977-present)

Blue Key Honor Society (1977-present)

Omicron Delta Epsilon (Economics honorary) (1976-present)

Received B.A. and B.S. degrees summa cum laude

Larrimore-Matthews Honor Scholarship (1975)

J.F.T. O'Connor Honor Scholarship (1976)

Arnenburg Travel Scholarships (1976 and 1977)

Larsen Travel Scholarship (1976)

2 Tennis Scholarships (1975 and 1976)

Dean's List, Catholic University of Puerto Rico

Dean's List, University of North Dakota

President's Honor Roll, University of North Dakota

STATEMENT OF KAREN BORLAUG PHILLIPS

Ms. PHILLIPS. Thank you, Mr. Chairman.

Mr. Chairman and Members of the committee, I am honored to appear before you this morning as President Reagan's nominee to be a member of the Interstate Commerce Commission.

Before I begin, I would like not only to thank Senator Packwood for that most gracious introduction, but I would also like to take this opportunity to acknowledge my parents and my husband who are here with me today, and my friends, many of whom are also here today, who have been so supportive through this entire nomination process and in my career in transportation in general.

With your permission, Mr. Chairman, I would like to discuss why I am qualified to be a member of the Interstate Commerce Commission and what contribution I believe I could make to the Commission. Before I do so, however, I would like to take this opportunity to outline my regulatory philosophy.

There have been some allegations that if I am confirmed I can be expected to vote for less regulation no matter what issue comes before the Commission. I can assure you, Mr. Chairman, that nothing could be further from the truth. While I believe competition should be relied upon to the maximum extent possible to ensure that shippers receive the best service at the lowest rate, and that consumers ultimately do receive the benefits of the competitive transportation marketplace, I fully appreciate the fact that a blind reliance on deregulation and minimal government interference cannot always be relied upon to promote the public interest. Less regulation does not necessarily mean no regulation.

Shippers and other parties often have legitimate grievances, grievances that require ICC oversight and action. The surface transportation regulatory reform legislation enacted in the late 1970s and early 1980s—and I am proud to say I played a minor role in the development of some of these bills—spell out in no uncertain terms that Congress intended for the ICC to continue to regulate the transportation marketplace whenever competition could not be relied upon to protect shippers. I believe this is the correct approach and one I intend to follow if I am confirmed by the Senate.

My second point is that I believe it is crucial that the Commission explore all aspects of each major issue that comes before it. Too often it is easy to make quick fix decisions which, while perhaps appearing to enhance competition, fail to address the very real and long term concerns. There are a number of critical issues before the Commission today, maximum rate regulation for captive rail shippers, the sale of short line railroads, competitive access for railroads, and negotiated rate undercharges in the trucking industry, to name a few, that merit thorough study and deliberation. If confirmed, I will work with all members of the Commission to ensure that the ICC examines these issues with a view to ensuring that the intent of Congress is indeed being fulfilled.

Third, I would bring a unique perspective to the ICC. If confirmed, I will at that time be the only sitting Commissioner who has worked for the Congress. In my capacity as a member of the Professional Staff of the Senate Commerce and Finance Committees, I have developed an in-depth understanding of Congress' pro-

cedures and the concerns of its members. Congress wants the legitimate concerns of its constituents addressed impartially and expeditiously. Congress wants real world decisions, not ideology, to real world transportation problems. If confirmed, my professional experience and educational background will help me be responsive to your concerns.

Mr. Chairman, I have had the opportunity to work on a number of transportation issues from a variety of perspectives for the last eleven years. As an economist at the U.S. Department of Transportation, I was a member of the team that worked to secure enactment of the Motor Carrier Act of 1980. My participation included not only considerable work with Members of Congress and their staffs, but also authoring research studies and analysis of the potential effects of motor carrier regulatory reform. Also, while I was an economist at the Department of Transportation and in my subsequent position as a member of the Professional Staff of the Senate Commerce Committee, Surface Transportation Subcommittee, I worked on the research and legislative efforts that led to enactment of the Bus Regulatory Reform Act of 1982.

During my three and a half years on the Senate Commerce Committee staff, I had the opportunity to work on a number of ICC related transportation issues: surface freight forwarder deregulation, hazardous materials transportation, and motor carrier safety. I also worked on several transportation issues falling outside the Commission's jurisdiction, including legislation to combat drunk driving, motor vehicle theft and odometer fraud.

Most recently I have served on the Senate Finance Committee Staff for the past two and a half years. Among my other responsibilities, I have worked on a number of transportation related tax issues. In addition, I have continued to work on motor carrier regulatory issues for Senator Packwood.

Mr. Chairman, I believe my background and experience make me well qualified to serve as a member of the Interstate Commerce Commission. If confirmed, I will work closely with Congress to ensure that congressional intent, as embodied in the Interstate Commerce Act, is being carried out, and that the policies adopted by the Commission serve to create the best transportation system possible.

Mr. Chairman, thank you very much for the opportunity to appear before the committee today. I would be happy to answer any questions the committee might have.

Senator EXON. Ms. Phillips, thank you very much, and you indicate from your short and concise statement that you have been through many of these types of hearings, and I appreciate the fact that you were short and brief and very much to the point.

I noticed in your opening statement that you started out by saying there had been some rumors that you would be for less regulation. And I was very pleased to hear you say that you try and put all this in perspective. I do believe that that is the crux of the questions that some of us will answer here today.

During the statements by some of the people around this circular table, there was a mention or two made of finally holding this hearing. I would take full responsibility for the fact in some untimely delay for, in my opinion, very valid reasons.

I for one have no question whatsoever with regard to your significant credentials, your background. I suspect that there would be few that the President could have nominated that would have been more basically qualified for this position.

So the delay in your confirmation hearing that I will take responsibility for, if someone wants to fix that, has nothing to do with our feeling with regard to you, your previous service to this committee, your excellent service to Senator Packwood in the various positions that he has placed you. As far as I think I can speak for the staff, the present staff of the Commerce Committee, to a person they spoke very highly of you and your background and credentials.

I do not think we are going to be focusing very much on that today. That is why I am starting out in this fashion. The only problems that we have concern what role you are going to play as a member of the ICC in trying to bring the ICC more into the real world with regard to the various regulatory functions that this important body is involved in. Many of us see the ICC as not performing its duties properly, particularly with regard to the Staggers Act. Some of the difficult decisions that come before the ICC suggest that the ICC is taking a position that is by and large for total deregulation, when obviously there were some fears of captive shippers and others being hurt under the Staggers Act.

And so I suggest, at least in the mind of this Senator, that is the only question we have. If you are confirmed for the Commission, is that going to help straighten the Commission out, in the view of many of us, or is it going to continue down a road that we frankly have not been very pleased with?

And all kinds of legislation, as you know full well, has been suggested. I guess I am particularly concerned about your position in supporting the administration's position, as I understand it, with respect to sunsetting the Interstate Commerce Commission in several of the questions that you responded to very directly in those submitted to you before the hearing.

Are you going on record this morning, if you are confirmed as a member of this Commission, that you are still in favor of sunsetting as soon as we can transfer the important functions and duties that the ICC performs?

Ms. PHILLIPS. I support the President's program, which calls for sunset of the Interstate Commerce Commission. However, I would hasten to add that sunset of the commission is a decision for the Congress to make, not the Interstate Commerce Commission.

If and when the Congress decides that the Commission should be sunset, I will do whatever is appropriate to ensure that that is rapidly implemented. However, in the meantime, as long as the laws are on the books for the Commission to enforce, I will do my utmost to ensure that they are implemented in accordance with Congressional intent.

Senator EXON. Let me ask the question in a little bit different fashion then. As a prospective member of the Interstate Commerce Commission, a very important body, that this Senator at least is against sunsetting, for reasons that I can outline in detail if someone wants to know about that later, but your recommendation as a

prospective member of the ICC is that we do indeed proceed with the sunsetting and elimination of the ICC.

Do you think that would be in the best interests of the transportation system of the United States? Or is this not unlike another proposal by the administration that the President advanced earlier, and that was to do away with the Department of Education?

I mean, is this somewhat different than that? Are you for—would you recommend to the Administration that they pursue the goals of sunsetting and eliminate the ICC?

Ms. PHILLIPS. I would recommend that the Commission be sunset. But again, I would have to add that it would have to be done extremely carefully. There are a number of functions at the Commission that could not be abolished altogether.

For instance in the railroad area, the vast majority of the Commission's responsibilities would probably have to be retained and would have to be transferred to the Federal Railroad Administration or some other agency in the Department of Transportation. It would probably have to be beefed up substantially from its present level. With respect to trucking and household goods carriers, there are a number of consumer protection functions and other functions that would also have to be retained.

I think it is an idea that certain merits exploration. As a presidential nominee, I support the President's program, and I would be anxious to work with Congress to do what Congress saw fit in that area to do.

Senator EXON. Thank you, Ms. Phillips.

My time is up on the first round. Senator Danforth.

Senator DANFORTH. Karen, when you were on the staff of the Commerce Committee your responsibility was largely trucking, correct?

Ms. PHILLIPS. Yes, sir.

Senator DANFORTH. And Pamela Garvie was responsible for rail?

Ms. PHILLIPS. Yes, she was.

Senator DANFORTH. But I believe you were familiar with the position we took. As I recall, we introduced a resolution at that time relating to the ICC in response to the concerns that various shippers had expressed.

Are you familiar with that effort?

Ms. PHILLIPS. I was generally familiar with it, yes.

Senator DANFORTH. Do you have a view as to whether that was a sound position that we took?

Ms. PHILLIPS. I think the concept of what you were after, which was to ensure that the Commission is adequately considering the needs of shippers in its various decisions, is very sound. I think the Commission must be very careful in implementing the various provisions of the Staggers Act to ensure that it is giving sufficient weight to the concerns of the shippers, particularly captive shippers, vis-a-vis the needs of the railroads.

And I agree with what you were trying to do.

Senator DANFORTH. Our position at that time was that we should not enact new legislation which in effect would re-regulate rail transportation, and that the concerns that had been expressed by the shippers could be handled by the ICC itself, and that the ICC is

the proper forum to work out these difficulties that the shippers were experiencing, but without undoing the Staggers Act.

Would that be your view of the appropriate role of the ICC?

Ms. PHILLIPS. Yes, I would absolutely agree.

Senator DANFORTH. Do you continue your general interest in safety, and do you see the ICC as being a body which could pursue matters of transportation safety?

Ms. PHILLIPS. I absolutely do continue to follow the safety issue and am vitally concerned about that. Motor carrier safety in particular is an area where the Commission can play a role, primarily with respect to the safety fitness determination of carriers that come before the Commission for new operating authority, as well as on a continuing basis as these carriers continue to have these operating authorities.

Back in 1984 I was privileged to work with you on the Motor Carrier Safety Act of 1984, where we included a provision which required the Interstate Commerce Commission and the Department of Transportation to substantially strengthen the safety fitness standard to make it more meaningful.

If confirmed, I would want to do everything possible to ensure not only that that law is being implemented in accordance with Congressional intent, but also to see if there are other ways to perhaps make the safety fitness test even more stringent and a much more meaningful standard.

Senator DANFORTH. Now, with respect to the general question of regulation and deregulation, some people are very strongly committed, ideologically committed, on one side or another of that subject.

Do you view the role of a Commissioner of the ICC as being one of carrying on an ideological crusade for regulation or for deregulation? And are you anxious to go to the ICC to be a crusader for a particular philosophical position?

Ms. PHILLIPS. I am anxious to go to the Commission, but not to be a crusader for deregulation or re-regulation, but rather to implement the laws enacted by Congress in accordance with the will of Congress.

I believe that these laws are good public policy and I believe that the Commission has the tools to effectively regulate the transportation system as Congress intended.

Senator DANFORTH. Thank you, Mr. Chairman.

Senator EXON. Before I recognize Senator Rockefeller, we have been joined by Senator Adams and Senator Bentsen. Do either Senator Adams or Senator Bentsen have an opening statement? We would be glad to entertain those at this time.

Senator ADAMS. I will wait for the questioning period, Mr. Chairman.

OPENING STATEMENT BY SENATOR BENTSEN

Senator BENTSEN. Mr. Chairman, only because I have to go to the floor on the trade bill will I make a comment.

I am normally not very impressed with someone that has purely academic or governmental service. I like to have someone that has been out in the private sector. But I was reading through this

résumé of yours and listening to your answers. I am glad you have chosen public service.

And it is obvious from your answers you are a pragmatist, both in what you are seeking to achieve and trying to balance off these fellows 'questions. So I am delighted to support your nomination.

Ms. PHILLIPS. Thank you very much.

Senator EXON. Thank you.

Senator Rockefeller.

Senator ROCKEFELLER. Good morning, Ms. Phillips. I also am very impressed by you.

Ms. PHILLIPS. Thank you.

Senator ROCKEFELLER. You are welcome.

The railroads have testified that about 80 to 85 percent of their traffic is not subject to ICC regulation. So that means, oh, these hundreds of thousands of rates that exist out there, most of them, 80 to 85 percent, are deregulated. But that also, does it not, means that there are quite a few that are subject to ICC regulation, between 15 and 20 percent?

Do you know how many times since the passage of the Staggers Act that the ICC has ruled in favor on a final rate relief matter, in favor of a captive shipper?

Ms. PHILLIPS. You mean in terms of finding that a rate is unreasonable?

Senator ROCKEFELLER. Yes.

Ms. PHILLIPS. I have been told that number is five, but I do not know if it is true.

Senator ROCKEFELLER. The number is five, and I might just say one was in San Antonio, which was a special legislative remedy. Omaha Public Power District case, that was just before the House committee began to mark up CURE legislation in the last Congress.

Then there was the spent nuclear fuel case, only after Chairman Dingell of the House extracted a promise during House hearings from Chairman Gradison to finish that case. There was the Arkansas Power & Light, which issued—that was issued the day before House hearings in this Congress began.

And finally, there was McCarty Farms, which was a tentative decision, appealed by the railroads, issued the day before the second day of House hearings. I just say that for a reason.

Does that raise in your mind any question whether the ICC has been diligently carrying out its captive shipper responsibilities?

Ms. PHILLIPS. I think it is a series of interesting coincidences, to say the least. I think in general that the Commission has been effective in terms of its rate regulation policies.

But I have not studied all of the particular rate reasonableness cases, and I would intend to do so if I were at the ICC. I would just say that I think sufficient standards are in the Staggers Act in terms of allowing the Commission to rule on these cases effectively.

I would hope that my presence at the ICC would help ensure that these cases are ruled on expeditiously and carefully.

Senator ROCKEFELLER. Mr. Chairman, I want to get back to one part of that question that she answered in a moment, because it did not square with part of her written response to some questions I had asked.

You have heard, of course, that the ICC has reduced its docket.

Ms. PHILLIPS. Yes.

Senator ROCKEFELLER. To what do you attribute that?

Ms. PHILLIPS. I understand that the Commission is just taking action to try and resolve these cases as expeditiously as possible. I have not studied the particular cases specifically.

Senator ROCKEFELLER. May I suggest through the form of a chart a particular possibility of an answer for that.

[Pause.]

Senator ROCKEFELLER. Now, I can no longer see you, Ms. Phillips, but if you feel your freight rate is too high, literally—this is not dramatized, this literally is how you can obtain relief from the Interstate Commerce Commission.

And at the very end, toward the side of the gentleman that is holding that, it says "You win." But you would have had to have gone through all the previous steps. And I just want to say, a small coal producer in West Virginia last year said to the House that the ICC had told her that, no matter how high her rate went, a rate reasonableness case at the ICC was much too expensive for her. They could not do anything for her.

Now, what do I tell my producers, small shippers, at home? They are going to spend $500,000 or a million dollars to go through preparation for a case like this? And I suggest to you that is one of the reasons why the docket is so clean at the ICC.

Do you not agree?

Ms. PHILLIPS. That is quite possibly the case. I would agree that it should not be as difficult as it appears to be for smaller shippers to bring cases to the Commission.

I think one of the things that the Commission should carefully examine is how can the Commission ensure that small and large shippers, railroads, and everyone have equal access to the Commission in terms of getting decisions rendered quickly.

Senator ROCKEFELLER. But nevertheless, the net is that five pro-captive shippers since 1980 and none until 1986, six years after the passage of the bill.

Now, I am troubled by one matter. In response to some questions that I asked you and you gave me answers on, you said that you would de-emphasize product and geographic competition, that you were troubled—your word—by the ICC record on rate reasonableness, and suggested that the ICC "may want to review its maximum rate standard."

You agree that the ICC should review the revenue adequacy double writeup issue. You say that "it may be useful to explore further the treatment of productivity in the RCAF." That is the rail cost adjustment factor.

And you seem to be troubled by the treatment of competitive access. Indeed, you say that the CURE bill, S. 676, raises a number of legitimate concerns.

But then you say, despite all of this, that your "general inclination is to try to avoid amending any major legislation whenever possible, for fear that the original intent of the legislation may be distorted."

Now, I simply ask you whether you can appreciate that others examining the same set of facts and wanting also to preserve the

original intent of the Staggers Act may reach a different conclusion, that being that legislation is needed? Many of the matters that you say simply need more review, Congress may decide that it has enough experience with what it needs to resolve.

And I do not want to take the chance, from my point of view, of waiting for another eight years to see if the ICC goes along with that.

Is it not appropriate, as I conclude, for Congress, given the number of problems that I have identified on that chart, which you have heard ad nauseam over the years, that it decides—that Congress could decide that it wants to legislate for the very reason that it wants to preserve the original intent of the Staggers Act?

Is that not reasonable?

Ms. PHILLIPS. That is reasonable and that is a decision that Congress has to make. I do believe that the Commission has the tools to effectively regulate those rail rates that are regulated under the Staggers Act. But that is a decision that Congress has to make.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Rockefeller.

Senator Packwood.

Senator PACKWOOD. Mr. Chairman, I would hope we would not use Ms. Phillips to vent our frustrations on captive shippers or the Interstate Commerce Commission in general.

I can assure you that she is indeed her own person. She has disagreed with me on a number of occasions on things when she worked with me, here and in the Finance Committee. I do not have any hesitancy about her being willing to enforce the law.

We all have a captive shipper. I have Portland General Electric in a plant at Bordman, Oregon, and a 20-year contract with Holden Coal, and they think they are paying now too much for the coal. They have only one railroad to get it there. They have no other way to get it there, and obviously they are not going to get it there any other way but railroads.

She is familiar with those issues and I am. And the fact that there may be some frustrations on captive shippers or the fact that the ICC may have made a decision in one or two of the cases that you or I do not agree with I do not think should necessarily reflect on Karen.

Secondly, as far as abolishing the ICC, I do not think it is quite analogous to other situations. We have not abolished it, but—I have not seen the figures lately—employment has been reduced from—I will take a guess—1,600 to 1,000 over the last six or seven years, and correctly I think.

It is the oldest of the agencies. It was the first regulatory agency we created. It had frankly gotten hoary, encrusted, and needed shaking up.

I think we could get rid of the Motor Carrier Division. I think we could finish truck deregulation, give the safety and insurance functions to the Department of Transportation and get rid of the rate bureaus and the Motor Carrier Division. I do not know how many employees the division has, but if it has a couple hundred, cut them off.

There is nothing per se wrong with saying that as the need diminishes we should consider getting rid of the government organization that was needed when the need was there.

And in some areas it has diminished. It has not yet diminished in terms of captive shippers. But whether that has to be done by the Interstate Commerce Commission or some other agency of government in the regulation of captive shippers and railroads that serve them is a legitimate question.

Because you say the Interstate Commerce Commission should disappear does not mean you are saying that captive shippers willy-nilly are going to be subject to avaricious railroads who are going to gouge them.

Now, I do not have any question. I have no doubt in my mind that Karen can fulfil this job to the satisfaction of this committee.

If, for whatever reasons, we choose not to pass the CURE bill or we choose not to change the Staggers Act or we choose to change truck deregulation, that is our responsibility. If by chance it gets stopped in the House by some rules argument or in the Senate by some filibuster, that is not the Interstate Commerce Commission's fault and especially it is not Karen Phillips' fault.

I do not know what is going to happen to the CURE legislation. If we pass it, I can assure you she will carry it out.

My personal judgment is I am not sure it ought to pass. But that is not her responsibility.

Thank you, Mr. Chairman.

Senator EXON. My distinguished friend and colleague, he is not saying, I hope, that unless CURE legislation or some form of it is passed, that means that this committee which has oversight responsibilities, is endorsing the attitude of the ICC, carte blanche, in the last few years.

Senator PACKWOOD. No, it does not necessarily mean that.

Senator EXON. Either necessarily or otherwise, you do not think the——

Senator PACKWOOD. No. legislation fails to pass for all kinds of reasons, and no one should read into it, if it fails, that it failed because the committee carte blanche approves of everything the ICC did. It can fail for any number of reasons, one of which is a filibuster. I am not going to do one or conduct one on it, but it can fail for a whole—it can be vetoed. Who knows what reasons it does not become law.

But it certainly doesn't necessarily mean we approve of what the ICC did.

Senator EXON. I just wanted to make that point clear. I share your feelings in that area, and I did not want anyone to draw any conclusions to the contrary.

Senator ADAMS.

Senator ADAMS. Thank you, Mr. Chairman.

Ms. Phillips, nice to see you this morning.

What are the names of the members of the team that you worked with at the Department of Transportation that you mentioned in your statement?

Ms. PHILLIPS. Well, there were literally dozens of them, Mark Aron, Jack Fearnsides, my husband Larry Phillips, John DeVierno, the list goes on. There are people throughout the Department of

Transportation as well as in the other agencies: Mary Schuman at the White House, Rick Neustadt, Ron Lewis, also over at the White House, Barbara Anthony at the Department of Justice.

I would be happy to provide you with a list, but those are the ones that come to mind immediately.

[The following information was subsequently received for the record:]

COMMITTEE ON FINANCE,
Washington, DC, June 20, 1988.

Hon. BROCK ADAMS,
U.S. Senate,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR ADAMS: This letter is in response to your request at the June 7 Senate Commerce Committee hearing on my nomination to be a member of the Interstate Commerce Commission for a list of the members of the task force in the Executive Branch that worked on motor carrier regulatory reform.

There are many individuals throughout the Executive Branch who contributed to this effort—at the Department of Transportation, other Executive Branch agencies, and at the White House. My work focused primarily on two issues: trucking service to small communities and truck safety and insurance. I worked primarily with the following individuals on motor carrier regulatory reform:

A. U.S. DEPARTMENT OF TRANSPORTATION

1. Alan Butchman
2. John J. Fearnsides
3. Teresa Schwartz
4. Susan J. Williams
5. Mark Aron
6. Lindy Knapp
7. Laurence T. Phillips
8. Edward H. Rastatter
9. John A. DeVierno
10. Kenneth L. Pierson

B. THE WHITE HOUSE

1. Ron Lewis, Domestic Policy staff
2. Richard Neustadt, Domestic Policy staff
3. Mary Schuman, Domestic Policy staff

C. COUNCIL ON WAGE AND PRICE STABILITY

1. Beth Pinkston

D. DEPARTMENT OF JUSTICE

1. Elliott Seiden
2. Barbara Anthony

Safety in the trucking industry has been a serious problem for a number of years. I believe the government should take steps to ensure motor carrier safety. Legislation enacted in 1982, 1984, and 1986, combined with the Motor Carrier Act of 1980's minimum insurance requirements for motor carriers, is, in my view, the minimum government effort necessary to enhance safety in the trucking industry. I can assure you that if confirmed, I will do everything I can at the Commission to not only work with DOT to improve motor carrier safety regulations and enforcement, but also to use the tools available to the ICC with respect to the safety fitness component of the fit, willing, able requirement for new carriers and for all carriers on a continuing basis.

If I can provide you any additional information, please do not hestitate to contact me.

Sincerely,

KAREN BORLAUG PHILLIPS,
Minority Chief Economist.

Senator ADAMS. I would appreciate it if you would because you state in response to the question that was asked by the Chairman

that you support the abolishment of the ICC, and then refer in your answer to questions by Senator Rockefeller—and this is on page 2—and I am quoting your statement, "Finally, safety in the trucking industry remains a serious problem. This is not, however, due to economic deregulation but rather to lack of enforcement of safety regulations." Then you refer to the Conference at Northwestern which I am familiar with. I believe I was at that at that time.

Do you really believe that safety is not controlled by economic regulation?

Ms. PHILLIPS. I believe that the overriding factor that contributes to safety performance is safety regulation and enforcement.

Senator ADAMS. Do you have any idea how the ICC enforced safety regulations before the ICC went out of business by failure to get a quorum in the 1980s? They did it by pulling people's ticket, did they not?

Ms. PHILLIPS. That is possible.

Senator ADAMS. You know what a red flag is on files.

Ms. PHILLIPS. Yes.

Senator ADAMS. Did they not red flag them?

Ms. PHILLIPS. I am not aware of the Commission's practices in this particular area recently.

Senator ADAMS. Well, that economic regulation was always the method of determining whether a carrier was fit, willing and able, and so that was the basis by which safety regulations, the so-called five to seven year cycle was broken.

Now, you say it means enforcement of safety regulations. Ms. Phillips, who is going to enforce these safety regulations?

Ms. PHILLIPS. Safety regulations are the responsibility of the U.S. Department of Transportation and——

Senator ADAMS. Do you know how many people there are in the Motor Carrier Division? There are 32 inspectors, the last count I had. Maybe they have gone to 100.

Ms. PHILLIPS. The Congress has also enacted several pieces of legislation. Ones that come to mind are bills in 1982, 1984 and 1986, which are all intended to address this problem. I think the one most directly related to your concern was in 1982, in Title IV of the Surface Transportation Assistance Act, where the Congress created the Motor Carrier Safety Assistance Program under which state regulatory agencies would supplement the activities of the U.S. Department of Transportation——

Senator ADAMS. Ms. Phillips, do you believe that the state safety enforces, the state patrol and so on, are capable of controlling truck safety in the United States at the present time with the carnage that is going on on the highway, with people who are independent truckers running out of money at the end of a five year cycle, are being lumped at one end on the docks, and are out there on the highway day after day. There aren't enough people in the United States, patrolmen or otherwise, to catch them.

Do you know of a single study that says that any of these trucks out there overall are safe?

Ms. PHILLIPS. I am aware of data which show that the safety performance of the trucking industry has improved, or at least has not deteriorated since deregulation.

I think the important point to make here, however is that the safety problem did not just start with deregulation. Motor carrier safety was a serious problem in the late 1970s. I recall doing some research on it when I was at the Department of Transportation in the late 1970s, and there was no direct correlation between the degree of regulation that a carrier was subject to and the safety performance of that carrier. We often found that——

Senator ADAMS. Ms. Phillips, I know that—that is why I asked you who was on that team, and for someone to say to me that truckers that are running deregulated, the so-called exempt carriers, at that time agricultural carriers, now owner-operators, are as safe as regulated carriers who are regularly inspected, have a maintenance base which can be checked, and they are checked as they go out on the road, I just do not think has ever seen the operation of the trucking industry. That is what I am concerned about.

That is my question to you, and that is just the bottom line. And this ICC went for two years under Reese Taylor and did not even have a quorum, and I do not know how the other members feel about it, but the ICC was the method established by which we tried to produce enough stability in that industry so that it was a safely run industry.

I do not think it is safe now, and I do not think you can get at it with a state patrol. I do not see weighing stations opened, I do not see inspections taking place, and every time there is a random inspection, it runs close to 50 percent that that truck is not safe on the highway.

I think there is a linkage. How much of a linkage has been left to the ICC and to the safety groups within the states, but I am concerned—it is the same question the Chairman asked in a different way. We will pass legislation up here, we will try to use technology, Senator Danforth and I have picked at the edge of this with the black box and with the antilock brakes, but the basic problem we have out there is a majority of the trucking industry is now running with unsafe equipment and driving too many hours.

And if the ICC is either abolished or does not meet or does not face this problem and thinks somebody else is going to do it, then I do not think that is a good Commission.

Thank you, Mr. Chairman.

I will wait for a second round.

Senator EXON. Thank you, Senator Adams.

Senator ADAMS. You can answer any way you want, Ms. Phillips. I am just stating what—you see, the fight in the department has always been between the operating people and the academic people, and I happen to represent the operating people because I have lived with truckers and railroad people and so on all of my life, and what is going on out there in the field and what is said in economic theory are two very different things, and I just want to be certain that somebody is on the Commission, and you may well be the person, that understands the connection between how you go about trying to regulate an industry using its economic right to be in existence, and Adam Smith did not ever say that transportation should be unregulated. He always stated that transportation should be a regulated portion of the economy, and that is all I am trying to be certain of, is that the ICC responsibility there is under-

stood because I saw the CAB give away its jurisdiction before it terminated.

The ICC is very capable of giving away its jurisdiction before it is sunsetted or legislation comes up. So it is how people act, not just how we legislate.

And I think we all understand that, and I have not made up my mind. I just wanted you to know where I was coming from.

Ms. PHILLIPS. Senator Adams, if I might make one point.

Senator EXON. Certainly. I would be glad to give you time to answer.

Ms. PHILLIPS. I take the Commission's safety fitness responsibilities very, very seriously. I do believe that safety regulation is the best means of ensuring safety in the industry. However, as long as the Commission is in existence and this safety enforcement tool, in terms of the fit, willing and able criterion both on an initial and a continuing basis for carriers, is available to the Commission, I believe it should be used as much as possible to ensure safety in the industry.

Secondly, even if the Commission were sunset, I do believe that the fit, willing and able function would have to go somewhere, to the Department of Transportation or to some agency that would be responsible for what remaining trucking regulation there was. I do not think you can get rid of that entirely.

Senator EXON. Senator Kassebaum.

Senator KASSEBAUM. Ms. Phillips, I would just like to say I think you bring an extraordinary amount of experience to the ICC at an important time in which we do need and have always needed a full component of Commissioners with a good understanding of the responsibilities of the ICC.

To Senator Adams, I would just like to ask, Brock, you mentioned in passing in the litany of things that have not been done, weigh stations being closed.

Is that not a state responsibility?

Senator ADAMS. Absolutely, and these programs that we passed up here said that we would assist states and so on to do it. It simply does not work. There are not enough people to man them, there are not enough state funds to keep them open, and therefore our legislation that we passed up here is meaningless, and that is my point. That is what I am scared about. I go out on that Beltway, and I drive into Virginia, and I do not see any of those stations ever open, or in Maryland I never see them open, and there is an accident a week, sometimes three or four on that Beltway, involving a truck, and it is nearly always somebody that does not have brakes, has a hazardous material, has been driving too long, and it just does not happen.

Senator KASSEBAUM. I think if that is a problem, it is our responsibility in oversight work here perhaps to find out why this has not happened.

I do not mean to get into that except I just knew that the weigh stations were state responsibilities.

Senator ADAMS. Absolutely, because prior to that time, if you were regulating the truckers, when they went into business and stayed in business, they were licensed, and their ticket could be

pulled if they did not maintain their trucks. They had to be fit, willing and able, and that is an economic and safety test.

If you remove that, then you are looking at the wrong end of the horn.

Senator KASSEBAUM. I did not mean to get into this discussion, Senator Adams.

I would just like to comment on the Staggers Act for a moment because I do not think our questions to you have anything to do with our support of your nomination. I think, as a matter of fact, that certainly a majority of us will feel that we are well served by having someone of your professional competence serving on the ICC.

I did just want to pursue a question of Senator Rockefeller's in an answer that you supplied to his question. You said you thought that there were a number of troubling issues, for instance, ensuring adequate protection for captive shippers and reasonable competitive access for competing rail carriers.

Did I understand you to say that you think the ICC already has the authority, that you believe the authority does rest with the ICC now, and that sufficient standards are in Staggers if the ICC will use the remedies available to it. Is that correct?

Ms. PHILLIPS. Yes I do, absolutely.

Senator KASSEBAUM. Do you feel, in studying past decisions, that the ICC perhaps has not used all of the remedies available?

Ms. PHILLIPS. Based on the concerns that are raised by shippers at this point in time, I think that there is a good chance that perhaps not all of the remedies have been used to their fullest. I have not reviewed a lot of specific decisions, but just based on the controversy that is out there right now, I think it is safe to say that that may be the case.

I do believe that the Staggers Act provides the adequate tools for the Commission, but I think that there is a lot that the Commission could do to carefully examine these tools in light of the shipper concerns.

Senator KASSEBAUM. Would you have any other suggestions to make as far as how the ICC itself might improve procedural operations to help bring together some of the contending forces on this issue, because there is a great deal of discontent and concern, and it seems to me the ICC perhaps could look to some different ways to address this.

Do you have any suggestions?

Ms. PHILLIPS. I have not studied all the particulars in terms of Commission procedures and which parties can be brought together at different times, but as someone who has worked on a number of delicate negotiations, especially here on the Hill on different pieces of transportation legislation, I can attest to the benefits that come from bringing these parties together.

I place very strong store in doing that, and that is something that I consider one of my big strengths. In going to the Commission, I think I would be able to bring some of these people together, and hopefully we could work out some solutions. That is something I would very much like to pursue.

Senator KASSEBAUM. Thank you very much, Mr. Chairman.

I think we would be well served having you on the Commission as soon as possible.

Senator EXON. Thank you, Senator Kassebaum.

Senator Pressler.

Senator PRESSLER. Thank you, Mr. Chairman.

Many of my questions have been covered. I want to say that Ms. Phillips has a lot of qualifications. She even has one very unique qualification. Karen even traveled to South Dakota to help staff a hearing I held on the deregulation of the trucking industry during January a number of years ago. Perhaps Karen remembers the ground blizzard that occurred during her visit more than she——

Ms. PHILLIPS. I do.

Senator PRESSLER. More than she remembers the contents of that hearing.

But you will recall at that hearing some of the problems truckers brought forward.

What is your best recollection of some of those problems?

Ms. PHILLIPS. There were a number of concerns raised by truckers in line with what we hear nationally from other truckers about deregulation, concerns about the effects of increased competition, carriers driving longer hours, most particularly the fact that since there is more competition, there are not quite as many revenues out there for them—the rates are set lower, more competitive pricing, there are more carriers hauling the freight that is out there, this type of thing.

Senator PRESSLER. In South Dakota we have some captive lines that are not being served and so forth.

Another area that is of great interest to me is the short line railroads.

What is your philosophy on the ICC's relationship to rates at hookup points between the short line railroads and the big railroads, or to make it broader, what do you think the ICC's proper role under current law is?

This is another area where maybe Congress should be making more laws, but how do you view that relationship? If you have already covered this, I will read it. I am sorry I arrived late at the hearing.

Ms. PHILLIPS. No, this has not been covered.

Just in general, in terms of short lines, I think that short line sales often can be very, very beneficial because in many cases, if a line were not sold by a railroad carrier to a new short line company, that service would be abandoned entirely. So I think that there are a lot of benefits that can accrue from these short lines.

At the same time, it is important that the Commission balance not only this benefit to the railroads and others, but also look at the labor protection issue.

I am afraid I have not explored the particular hookup issue that you referred to. I would be happy to look at that and answer for the record for you.

[The following information subsequently received for the record:]

COMMITTEE ON FINANCE,
Washington, DC, June 20, 1988.

HON LARRY PRESSLER,
U.S. Senate,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR PRESSLER: This letter is in response to your request at the Commerce Committee's June 7 hearing on my nomination to become a member of the Interstate Commerce Commission (ICC) for my views on the ICC's role in the relationship between short-line and major railroads at "hook-up" points and whether additional regulation is needed.

After talking with officials from short-line and regional railroads, it is my impression that hook-up relationships between large and small rail carriers are generally quite good. In fact, I understand that some of the major carriers are very cooperative in helping smaller railroads develop additional traffic. This cooperative relationship is due in large part to the fact that the small carriers act as feeder lines, providing significant traffic to the national rail system. Much of this traffic is truck competitive and would be deverted to the highways if smaller rail carriers could not provide shippers with competitive rates and efficient service.

I am a strong believer in the formation of regional and local railroads as the most economically productive alternative to abandonment. Given the importance of short-line and regional railroads, I believe the ICC must be vigilant in ensuring that small carriers are treated fairly by the large carriers, particularly in two areas:

1. *The relationship established between a buyer and seller as a part of a line spin-off.* The relationship between a new railroad and the seller of the rail line is established at the time of the sale. While it is, and should be, the responsibility of the buyer to negotiate the most favorable arrangements possible, and to verify that the data used in these negotiations are accurate, I believe it is appropriate for the Commission to ensure that selling railroads are making every effort to provide to the purchaser financial, cost, and traffic data that are as accurate and useful as possible. Likewise, I believe the ICC should be responsive to any post-sale submission that calls into question the veracity of the information provided during the sale process.

A second issue that must be resolved is the number of traffic connections available to the purchaser. A small railroad benefits by having more than one major railroad connection. If a selling railroad insists on limiting reasonble hook-up to a second or third carrier, then the ICC should review that situation. Likewise, if a Class I railroad is engaged in a pattern of abandonments designed to block the formation of small railroad operations, this should be of concern to the ICC, since it would reduce potential rail competition.

2. *The carrier's ongoing commercial relationships.* It is in the interest of the large carriers to threat their smaller connections fairly because they are a very valuable source of traffic. However, if allegations of abuse were to arise with respect to divisions of revenue, care and equipment supply, or various financial and administrative interrelationships, they should be investigated by the ICC.

If you need any further information, please do not hesitate to contact me.

KAREN BORLOUGH PHILLIPS,
Minority Chief Economist.

Senator PRESSLER. Yes, if you could answer for the record how you view the potential problem of the short lines getting into a subservient position with the big carriers in the hookup rates. Expanding the question slightly, there have been some cases where the short lines have to bid for railroad cars on computers. It looks very fair, but the fact of the matter is that the short lines cannot anticipate some of their needs as far ahead as certain other types of industries, particularly where you have agricultural products, where there is a variance in the crop or a variance in the amount that might be purchased by a foreign country, and suddenly you need more boxcars.

In any event, the pure competition on the computer to get boxcars from some of the big carriers has caused a lot of problems to the short line railroads. My state and many parts of, indeed, California and New York are depending on short line railroads. I think

we are going to have to pay a lot of attention to that in legislation around here, and I know that Senator Rockefeller has worked considerably on this, and I certainly want to help out.

But I think the ICC has a role here to play.

Senator EXON. Thank you very much, Senator. Ms. Phillips, we will start the second round of questions now. There have been some statements made by Senators here this morning which I took as questioning the relevance of questions of you with regard to what the ICC has or has not done in the past and what they might do in the future.

I do not agree with that at all. As I stated very clearly, I think, with my opening words that came out of my mouth. There is no question in my mind, nor do I think in many of the people's minds around here about your basic qualifications for the position.

But I do think when appointees are made to a commission by any President, this is the one chance that the Congress has to see whether or not the interpretation of the laws that the Congress passed are being implemented in the fashion that was the intent of the Congress.

Now, there is plenty of room for disagreement as to what the intent was. But I mean, I think, I just wanted to leap to the defense of those of us who are asking questions, because this is a rare opportunity that we have. And if nothing else we want to impart to you as a potential new member of the ICC some of the concerns that we have.

Now, let me ask you something about the trucking business. You come heralded as a gung ho deregulator of the trucking industry. By nature that would scare to death, in my opinion, a sizable segment of the trucking industry.

In view of that, I had anticipated that when your confirmation came up there would be questions raised by the trucking industry. I want to tell you that as far as the Chairman of the Surface Transportation Subcommittee is concerned, despite the fact that I put out some feelers, not one single trucking firm came forth with any complaint whatsoever.

Now, I do not know whether that means they are totally delighted with your nomination, or whether you scare them to death. But at least they were conspicuous, I thought, by their absence in not raising any question.

But regardless of what the trucking industry feels, there are those of us on this Committee that have some very legitimate concerns that have been raised in questions asked by Senator Rockefeller, Senator Adams, and others.

Can you give us a summary as to what your attitude is with regard to further deregulation of the trucking industry? I would think it would be safe to assume that there should be further deregulation.

Do you really believe that we could eliminate all supervision in the near future by the ICC over the trucking industry and transfer it to the Department of Transportation or some other agency of government?

Ms. PHILLIPS. I do believe that is possible. I think it could be done in the very near future, as a matter of fact. But again, it would be critical to ensure that a variety of functions such as consumer pro-

tection functions and safety fitness functions were transferred somewhere. Those functions cannot be abolished completely.

I do support further trucking deregulation. I believe that the results to date of trucking deregulation show that it has brought a much greater degree of competition in the industry.

Shippers are generally receiving very good service, and this includes shippers in small towns and rural areas who were not receiving a great deal of general freight common carrier service prior to deregulation. They are receiving service at least as good as and in many cases better than what was present for them prior to deregulation.

Rate levels are very competitive in most markets. I think the general experience with deregulation has been a success.

I would add, however, that, as I said earlier, this is a decision for Congress to make and not for the Interstate Commerce Commission. If the Congress chooses to leave regulation at the level it is right now, so be it. That is what the Commission, in my view, should implement.

Senator EXON. Thank you. My time is up. I do have some other questions about rail that I will go to in the third round. Senator Danforth.

Senator DANFORTH. After Senator Adams' questioning, I recalled an article that appeared in the "Joplin Globe" on May 27, and I have just been given a copy of this article, and I will read it in the record.

The headline is:

Missouri Highway Patrol Curbs 217 Unsafe Trucks. More than half of the trucks stopped on southwest Missouri highways this week as part of a Federal highway safety program were taken off the road because they were unsafe.

The Highway Patrol stopped and inspected 421 commercial vehicles, mostly tractor trailer units, Monday through Wednesday, at five sites, one of them west of Joplin on Route 66, and placed 217 out of service.

Corporal Kent Casey of the Patrol Springfield Office said the operation was the second of eight planned this year. The inspections are funded by the Motor Carrier Safety Assistance Program, a division of the Department of Transportation.

The Patrol brought in 36 officers to conduct the inspections. Casey said they checked wheels, suspension, steering and other parts that could cause an accident if they failed. He said they stopped as many vehicles as possible, pulling one over each time an officer finished inspecting another.

They issued 491 tickets and 2,412 warnings. Some drivers received more than one ticket because of multiple violations, Casey said. Most violations involved wheels, brakes, and suspension.

Officers also checked the various permits held by drivers, as well as their log books, to make sure they had rested and alert as they drove. They placed 30 drivers out of service for log-book violations, driving with a suspended license, or driving without a license.

Checks of drivers' licenses resulted in the issuing of 21 outstanding misdemeanor and felony warrants for such things as failing to appear or speeding charges, and writing fraudulent checks. Casey said at least two drivers had more than one outstanding warrant.

The four inspection sites other than Joplin were: Highway 60, west of Highway 71; Highway 71A, south of Diamond; Highway 43, near Seneca; and Highway 71 in Pineville.

Casey said that more than half of the vehicles being unsafe to drive sounded like a high percentage to him, so he checked last year's records. He said that in May 1987 officers inspected 470 commercial vehicles in the Springfield area, and pulled 248 out of service.

Then there is also an editorial from the "Joplin Globe" dated June 6, 1988, and Mr. Chairman, I ask that this be placed in the record.

Senator EXON. Without objection, so ordered.

[The article follows:]

[From the Joplin Globe, June 6, 1988]

TRUCK TRAUMA

The results of the Missouri Highway Patrol's crackdown on unsafe trucks last week ought to have motorists quaking in their shoes. More than half of the 421 commercial vehicles that were pulled over had defects serious enough for patrolmen to order them off the roads.

The trucks, mostly tractor-trailer rigs, were inspected at five sites, including one west of Joplin, as the patrol argumented its normal force by 36 officers expressly for the purpose of checking as many vehicles as possible. The inspections included brakes, wheels, steering and other parts that might cause or contribute to an accident if they failed. The patrol issued 491 tickets, handed out 2,412 warnings and took 30 drivers off the trucks for log-book or license violations.

What all this means for the average driver who may put in only a few dozen miles on the highway each week is sweaty palms the next times he sees a big rig in his rearview mirror barreling down on him at 65 miles per hour. For all he knows, the brakes are bad, the wheels are wobbly and the suspension is falling apart. Based on what the patrol net brought in, he has good reason for concern, even fear.

But more alarming than the high number of trucks running with deficient safety equipment in the vicinity of Joplin was the sobering fact that the percentages of commercial vehicles with problems hasn't changed much. The patrol pulled 217 of 421 commercial vehicles off the highway last week. A similarly intensive operation near Springfield in May 1987 had 248 of 470 taken out of service.

The solution is for an outraged public to demand that the trucking industry clean up its act and scream bloody murder to state legislators and congressional delegations. Ultimately, tougher laws and better enforcement will result. To be fair, many firms do give safety and maintenance high priority. Obviously, however, others don't take the necessary pains. Their over-the-road behemoths with faulty equipment are nothing less than accidents looking for places to happen. And heaven help those unfortunate to be at the wrong place at the wrong time.

Senator DANFORTH. Would you tell us the origin of the legislation that created this program that led to these inspections?

Ms. PHILLIPS. The Motor Carrier Safety Assistance Program, or the MCSAP program as it is known, was created during consideration of the Surface Transportation Assistance Act of 1982.

Title IV of that Act, which came under the jurisdiction of the Commerce Committee, included these provisions. It started off as a fairly modest program—I believe it was $10 million in the first year—for grants to states to enforce Federal and compatible state motor carrier safety regulations. It grew to a considerably larger program in subsequent years.

My understanding——

Senator DANFORTH. Will be $60 million next year.

Ms. PHILLIPS. Yes. My understanding is that this program has been very successful in the states that have adopted it and is indeed meeting the goals that were set out for it back in 1982.

We are seeing many more enforcement efforts and we are starting to see some improvements in highway safety.

Senator DANFORTH. Now, if the highway patrols of the various states are not out inspecting trucks, how many other people are there available, other than local law enforcement people, to conduct these inspections?

Ms. PHILLIPS. Not a great many other that I am aware of. The Department of Transportation has very few inspectors. I know at its heyday I believe it had about 130 inspectors or so, which for the thousands of trucks and buses out on the road is not sufficient to ensure safety on its own.

Basically it is something that really does need to be left to the states. They are the ones that are on the roads all the time that have the manpower to be able to do it, not only in terms of specific people dedicated to enforcement, but just the regular highway patrol and police.

Senator DANFORTH. And they man the weigh stations. Right?

Ms. PHILLIPS. Yes.

Senator DANFORTH. So the idea of making funds available so that these inspections can take place is utilizing the resource that exists?

Ms. PHILLIPS. Absolutely. And another important point, I believe, in the 1982 Act was that it encouraged states to adopt safety regulations that were compatible with the Federal standards.

Subsequent legislation that you were responsible for in 1984 went a step further and encouraged a uniform set of safety regulations nationwide. This, I believe, will make it easier for carriers to conform to safety regulations, which should also have a benefit on safety.

Senator DANFORTH. Where did this legislation originate?

Ms. PHILLIPS. Where did the 1982 legislation originate? My recollection was that the Department of Transportation, in its Surface Transportation Assistance Act, had some safety provisions in there, and then this Committee was instrumental in making sure that these---

Senator DANFORTH. It was largely the work of this Committee, was it not?

Ms. PHILLIPS. Virtually entirely in terms of making it into a very meaningful safety program, yes.

Senator DANFORTH. And you were the staff person, were you not, who handled that legislation for this Committee?

Ms. PHILLIPS. One of them.

Senator DANFORTH. You were the staff person who handled the legislation for this Committee, were you not?

Ms. PHILLIPS. Yes, I was.

Senator DANFORTH. And in handling the legislation, did you either draft or participate in the drafting of the legislation?

Ms. PHILLIPS. Yes, I did.

Senator DANFORTH. And conduct countless negotiations and generally move the legislation through the whole legislative process?

Ms. PHILLIPS. Both in 1982 and in the 1984 legislation, yes.

Senator DANFORTH. Put the hearings together that led to the legislation?

Ms. PHILLIPS. Yes.

Senator DANFORTH. Found the witnesses to testify for it?

Ms. PHILLIPS. Yes, sir.

Senator DANFORTH. It could be said that it is your program, could it not?

Ms. PHILLIPS. This Committee's program.

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Senator DANFORTH. I would say that it is your program. Now, I am up for reelection, so I might say that it is my program. But——

Ms. PHILLIPS. Fair enough.

Senator DANFORTH. You are only as good as the people who are working with you.

But this is your program, and it has been a very successful program, at least in my state. I do not know about Virginia. But in my state, this is the story about one inspection program in southwest Missouri, out of eight planned for this year.

I really cannot imagine anything better than utilizing the state highway patrol—I do not know how many members of the state highway patrol there are in Missouri, hundreds of them—at various truck weigh stations, hauling in trucks on the scene, using state officials to do it, because we do not have the federal officials and providing them with the funds to do it.

The effect of this program, as indicated by this article, is that it has been tremendously successful. And this is your legislation. Is it correct to say that you continue to be very interested in the subject of highway safety, truck safety?

Ms. PHILLIPS. Absolutely.

Senator DANFORTH. And various other safety areas. Rail safety too, I would imagine.

Ms. PHILLIPS. Certainly.

Senator DANFORTH. Thank you very much. I would just simply say, before I call on the next Senator, that I am not a lawyer and certainly not a judge, but were I a judge I would certainly have stopped the Senator from Missouri in his leading of the witness. Senator Rockefeller?

Senator ROCKEFELLER. Thank you, Mr. Chairman. In question 24, Ms. Phillips, I asked, well you in responding to that you expressed some doubt about whether rail coal hauling rates are passed directly through to the electricity consumers. And you seemed to be saying that this depends on the direction of the state utility commissioners.

Ms. PHILLIPS. Yes.

Senator ROCKEFELLER. Last year in hearings the National Association of Regulatory Utility Commissioners said that the rate that a utility pays to transport its coal is not an item on which a company earns a return, but it is in fact a cost paid directly, passed through the company from the customers to the ratepayers. And in fact it is a matter of law that the costs are passed directly to the consumer. Do you have any comment?

Ms. PHILLIPS. I am not aware of that, but I would be happy to explore it and provide a written response to you for the record. I am not aware of that particular point of law. But I would be happy to examine it.

[The following information was subsequently received for the record:]

COMMITTEE ON FINANCE,
Washington, DC, June 20, 1988.

Hon. JOHN D. ROCKEFELLER IV,
U.S. Senate,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR ROCKEFLLER: This letter is in response to your request at the Commerce Committee's June 7 hearing on my nomination to become a member of the Interstate Commerce Commission (ICC) that I review the comments of the National Association of Regulatory Utility Commissioners (NARUC) on coal rates.

At the Subcommittee on Surface Transportation's June 24, 1987, hearing on the rail industry and the Staggers Rail Act, Mr. Ashley Brown, representing NARUC, stated that ratepayers are directly affected by the ICC's implementation of the Staggers Act. According to Mr. Brown, "Transportation costs are not an item on which a utility earns a profit, but are incurred at the direct expense of the ratepayer."

I have reviewed Mr. Brown's testimony and he makes a number of valid points. Clearly, the rate paid by a utility for its coal transportation will be reflected in the final cost of the utility's service to its customers. The ICC must balance the needs of shippers, particularly captive shippers, with those of the railroads in its attempts to develop reasonable maximum rate guidelines.

My answer to your pre-hearing question on this issue was not intended to deny that railroad transportation charges for coal shipments are not a legitimate cost of doing business and should not be reflected in a utility's cost structure. Clearly, such charges are a cost of doing business and, clearly, such costs must be recovered from a utility's customers. My response was intended to point out that such cost increases can—and I believe do—affect the quantity of electricity demanded and supplied, a point fully consistent with NARUC's position.

If you have any further questions on my views on this matter, please let me know.

Sincerely,

KAREN BORLAUG PHILLIPS,
Minority Chief Economist.

Senator ROCKEFELLER. Well, I think that would be important because obviously in terms of rate reasonableness, if costs are way up in terms of hauling coal, that would seem to me a pretty fundamental question.

Ms. PHILLIPS. I agree.

Senator ROCKEFELLER. With respect to competitive access, you indicated that the ICC's authority regarding competitive access is an important tool, in your words, in promoting competition.

I would appreciate your comments on how you think the ICC has been doing in handling competitive access.

Ms. PHILLIPS. I think generally the Commission has done an adequate job, based on the standards that are in the Staggers Act, of looking at the competitive access question.

However, as I mentioned earlier, I understand that there are a number of shipper concerns about whether or not these particular standards are being implemented as effectively as they possibly can. And I think those concerns merit being looked into in greater detail.

Senator ROCKEFELLER. Conrail, which is certainly a major railroad, cancelled thousands of rates, in one instance I can think of. And although the ICC granted permission to cancel those rates, the court of appeals ruled that the railroads did not actually have justifiable remedy.

But then on remand, instead of ordering the cancelled rates reinstated, the ICC merely ordered the railroads to negotiate. The ICC also invited shippers to petition for reinstatement of individual joint rates.

Now, the effect of this, obviously, Ms. Phillips, was that the burden of proof regarding joint rates to shippers was shifted, and shippers wholesale, simply out of frustration and discouragement, even stopped trying to get action.

I mean, witness that sheet which I should have put in back of the Committee not in front of you, it was not polite to the Committee Members. How do you mean they are doing an adequate job? I do not understand that.

Ms. PHILLIPS. I was speaking in a very general sense in terms of the various particular remedies that are available to the Commission in terms of trackage rights and terminal access and this type of thing.

In the particular case that you mention, I am not sure if I were the Commission that I would handle it in that particular fashion. I believe the Commission must be very responsive to the concerns of shippers, in particular small shippers who have a more difficult time gaining access to Commission proceedings.

And I would want to be very careful in any actions I would take to ensure that shipper interests are adequately taken into account.

Senator ROCKEFELLER. Ms. Phillips, I want to say this carefully, because I do in fact, both on this Committee and in Finance, have great respect for you.

But I am really astounded by your answer to the very first question I asked you when I indicated that you were troubled by rate reasonables, double writeup, productivity in the RCAF, competitive access.

And you said that the CURE bill raised a number of legitimate concerns but then said, I do not want to change the law. Or I do not think a change of law is necessary. Which basically means that you would feel that your presence on the ICC would cause that body to be different.

Now, it is my general impression that the Chairman of the Commission is very hopeful that you will be confirmed, because she now is stuck with a 2–2 write-off, because one of the members is recusing himself. So she cannot do anything.

In effect because you have worked for Senator Packwood and you have strong alliances on this Committee, and I am careful in what I suggest because you are clearly a highly-qualified, extremely intelligent person, whom I respect a great deal, you then throw out a kind of a reasonableness sense. Oh, I do not think that the ICC has done this right, or I would do it different, or the Congress says this and I am troubled by rate reasonableness of competitive access.

In other words, there is some sense in my mind that you have got one part of this equation and you are trying to appeal through reasonableness, through doubting, that is, the ICC and what they have done, or suggesting doubt, hoping that others of us who are far more skeptical about the ICC will hop on board with respect to your confirmation.

I just do not understand how you can suggest there are so many things that concern you about what the ICC has done, have looked at 1980 through 1986 without a single captive shipper having been given relief, only before Congressional hearings. And that is not just propaganda, that is absolutely flat-out true, and everyone agrees on it.

Then you say that, if I am on this Commission, you are suggesting that you could make it different, because you are saying we do not need legislation. And the Commission has consistently for all of these years walked away from responsible action, in my judgment. And I am having trouble following your line of thinking.

Ms. PHILLIPS. I would say, Senator Rockefeller, part of my problem is that I have not dealt in detail with rail issues for most of my career. I have primarily done trucking, buses, and surface freight forwarders.

Without sounding like it is a cliche, I have a very open mind generally on rail matters. I want to examine them in very thorough detail and come to my own conclusions on what is the appropriate action to be taken.

With respect to how I would vote on specific cases, as I stated in my written statement, I am very much my own person. And while I tend in many instances to favor deregulation, I do not believe deregulation is necessarily the best answer in every case.

And the ICC has to carefully balance the needs of shippers versus the needs of the railroads and ensure that shippers are not getting short shrift, as it were. I believe I could do that at the Commission. I would take my responsibilities very, very seriously.

While I generally find that the Commission has done a good job in most cases, there are a number of specific cases I am sure I could cite if I went to the record and carefully examined them where I would not have handled things in the same fashion had I been there.

But I have not had the opportunity to review all of the cases, and I just honestly do not know. But let me assure you, I am very much my own person. And I love to study things, so I can assure you that if I were confirmed I would very, very carefully examine these issues.

Senator ROCKEFELLER. Thank you very much.

Thank you, Mr. Chairman.

Senator EXON. So that we will not get carried away here, I listened with great interest to my friend and colleague and your friend and colleague from West Virginia. He described you, Ms. Phillips, as highly qualified and intelligent.

I would remind you that you are also a Republican. There seems to be some inconsistency there somewhere along the line.

Senator Packwood, I give you a chance to respond.

Senator PACKWOOD. Karen, what are private truck carriers?

Ms. PHILLIPS. Private trucking companies are carriers that haul for a specific non-transportation company. Their primary business is not the trucking business.

Senator PACKWOOD. They normally haul for themselves, do they not?

Ms. PHILLIPS. Yes.

Senator PACKWOOD. Are they regulated by the ICC?

Ms. PHILLIPS. At this point they are not, no.

Senator PACKWOOD. Not only at this point; they have not been, have they?

Ms. PHILLIPS. They have not been, although there were certain types of carriage that the Commission did not allow them to do, primarily carrying freight for people other than themselves.

Senator PACKWOOD. Right. They were by and large limited to hauling their own.

Ms. PHILLIPS. Yes.

Senator PACKWOOD. And probably the only reason that private carriers got into the business was the frustration of dealing with common carriers who could only haul things one way.

But for whatever reasons, they got into their own business of hauling their own goods. And as they were not a common carrier hauling for anybody else, they were not economically regulated by the ICC.

Ms. PHILLIPS. Right.

Senator PACKWOOD. And the Department of Transportation was the one that regulated their safety.

Ms. PHILLIPS. That is correct.

Senator PACKWOOD. What was their record in terms of safety of private carriers?

Ms. PHILLIPS. Generally, the record of private carriers was excellent, very, very sound.

Senator PACKWOOD. Not only excellent, it was extraordinarily good.

Ms. PHILLIPS. Yes. It was considered to be a sound business practice to be a safe operator, and those carriers were indeed very, very safe.

Senator PACKWOOD. I ask you this only because I sort of sense from Senator Adams' questions that he thought there could be no safety without economic regulation. And here you had major companies running their own trucks with an extraordinarily safe record, unregulated economically by anybody.

Ms. PHILLIPS. Exactly.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

Senator EXON. Thank you.

Senator Adams.

Senator ADAMS. Ms. Phillips, the private carriage industry, so I could reply first to that question, it is very simple. You have a company directly responsible that can be sued and therefore has to maintain its trucks. This has always been true, is that not correct?

Ms. PHILLIPS. Yes.

Senator ADAMS. Yes. It is not the trucking industry at all. It is a company itself and it is regulated by its liability under the tort law and it is regulated by the fact that it is easy for anyone to sue them because they are sitting there with one maintenance base and one fleet of trucks.

Now, I was anxious that that Joplin matter be put in because that represents precisely what I am concerned about with your being on the Commission—it does not have to do with your credentials and so on—is that eight days out of 365 you had the state patrol out in Missouri, and one-half of the trucks stopped were faulty, which means on 300-plus days a year you have got half of the trucks in Missouri running around with major safety problems.

You absolutely cannot do it through the state patrol, and you cannot do it when you are involved with the seven-year cycle. Now, you know what the seven-year cycle is, do you not?

Ms. PHILLIPS. In terms of carriers?

Senator ADAMS. Of a truck carrier.

Ms. PHILLIPS. Yes.

Senator ADAMS. You just go right through. He buys the truck, maybe gets two. It takes five years for him to make the payments. He is lumped down to a point—you know what lumping is?

Ms. PHILLIPS. Yes.

Senator ADAMS. At the docks, he is knocked down to a point where he has no money to pay, so he cannot maintain his truck. He drives longer and longer hours, and if he is picking up for Giant Food, K mart, Sears and Roebuck, whoever, he has no leverage.

And so at the end of seven years he has got no truck. He is running on the rims. His brakes do not work, and he has driven himself to death.

Now, that is the seven year cycle. And how many of those are out there on the highway now under this new system?

Ms. PHILLIPS. I am not aware of the specific number right now, but I would only add that safety was a major problem prior to deregulation as well, and we had the same types of problems occurring even under a more strict economic regulatory system.

Senator ADAMS. Oh, well, we had it only in the exempt carriers, did we not?

Ms. PHILLIPS. No, regulated carriers also had serious safety problems.

Senator ADAMS. What did the ICC do with regulated carriers when they had several accidents?

Ms. PHILLIPS. With all due respect, not much.

Senator ADAMS. Well, they went in there and they pulled their ticket or they examined their maintenance facilities.

Ms. PHILLIPS. They may very well have examined maintenance facilities, but my understanding—and I am trying to recall from research from several years back—I do not believe they very often ever pulled a carrier's certificate for safety problems.

They may have investigated.

Senator ADAMS. And if they called and said, if you do not shape up you have got no license, do you think maybe they operated like a private carrier then?

Ms. PHILLIPS. Could be.

Senator ADAMS. It sure did. Could be. That is the point that is troubling me, is that there is a basic thrust as to what you can do in the trucking industry. It is very different than the rail industry, very different than in the airline industry, though the airline industry is going the same way that we all predicted that it would. It has become an oligopoly.

And yet you have not had basic inspection of a number of the carriers, because you do not have that big a force federally. And this act that goes to the states, they do not have enough people to be out there.

So you have got to use your economic regulation to produce safety in a major dangerous part of society, which is transportation of bulk commodities.

Now, I do want to follow up on one question in the railroad area, because I think we have—you have gotten my point of view on what I think about your Act. I do not mind it being there. I think it was a nice thing to have, but it is not approaching the problem

of the major statistics—and I hope you do some research on the statistics—of the number of truck accidents that we have had.

And do you also agree, the number of bankruptcies have about tripled in the last year? Sure. In other words, these people are going out of business rapidly.

I want to turn to railroads for just a minute. Do you think that the Wanona Bridge, which is an 800 mile section of track, is a short line?

Ms. PHILLIPS. I could not say for sure. I would have to look at the specifics of the case. I would tend to think it is a little longer than what most people might consider a short line. But I have not looked into the specifics.

Senator ADAMS. Do you have a feeling about the—and I am not certain what the answer to this is, because the railroad industry is in transition. But do you have a position as to whether the ICC should waive through all of these short lines?

In other words, they are not under abandonment proceedings, they are under sales proceedings, and the ICC has basically approved them all, including the most recent, the bridge areas throughout most of the western states.

Ms. PHILLIPS. I think that these cases have to be looked at very, very carefully on a case by case basis. I think again, as I mentioned earlier today, the Commission has to be very careful to weigh the competitive consequences, as in if there is no short line sale is there going to be no service whatsoever, which takes with it not only the fact that the shippers will lose service, but there will be no jobs at all, versus labor protection and other types of issues there.

I would simply say that I believe the Commission should very, very carefully study these cases and make sure that all of the often conflicting interests are taken into account.

Senator ADAMS. Do you know of one that has been denied by the Commission?

Ms. PHILLIPS. None comes to mind.

Senator ADAMS. I do not either.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Adams.

I just have two or three more questions. We are into our third round now and we appreciate your patience and understanding, Ms. Phillips, because I think you picked up the fact that many of us think this is an extremely important confirmation hearing that we are going through here.

Ms. Phillips, the Interstate Commerce Commission, as I understand it, recently proposed to eliminate all reporting requirements for carrier quarterly reports for those carriers under $5 million; also, to eliminate the uniform system of accounts as the standard for motor carrier recordkeeping and reporting.

What is your position with respect to the need to have pertinent economic and operational data on the trucking industry available to Congress?

I would think as an economist you would want that and to have the reporting in sufficient form over all of the industry. In other words, the uniform system of accounts has been used as a reference guide, instead of a prescribed accounting system.

In what ways do you believe it will be possible to compare carrier performance or monitor trends in the industry without maintaining these reports in an acceptable fashion from all carriers?

Ms. PHILLIPS. Mr. Chairman, I would just say I cannot comment on the specifics of the cases. It is a pending matter. But as a general comment and as an economist, I believe it is critical that we have a consistent, reliable source of data on the financial status and structure of the motor carrier industry.

The Commission to the best of my knowledge is the only such source at this point in time, and I think that any proposals to lessen the data reporting requirements should be looked at very, very carefully, because I do believe it is the Commission's responsibility to have this type of data available.

Senator EXON. Let me turn to the rail section for two questions. Certainly you are very familiar with the difficulties with the ICC's implementation of the Staggers Rail Act and the great controversy that it has caused. I cite specifically the present CURE legislation that is making the rounds.

Generally speaking, what can you say now with regard to what you feel that Congress did or did not do with regard to balancing shipper interests and carrier revenues, and what if anything in your mind needs to be corrected in that area with regard to legislation?

Ms. PHILLIPS. I think the Staggers Act on the whole is an excellent piece of legislation. It was an attempt to address the very seriously deteriorating financial state of the railroads that had been going on for some time and, while attempting to improve their financial position and make them more competitively viable, also balance that with the needs of shippers and consumers.

I think in general the act is very well written and is very well put together. I think it provides the Commission with the tools that it needs to have a balanced industry.

I would just say that I personally do not feel legislation is needed at this time, but I think that the ICC should very carefully examine its implementation of the Staggers Act to make sure that that balance is indeed being achieved and to make sure that the Commission is being very careful to consider the concerns of Congress in that area.

Senator EXON. Ms. Phillips, do you believe that in the absence of the passage of CURE or CURE 1 or CURE 2 or son or grandson of CURE that the Interstate Commerce Commission has the flexibility under the Staggers Act to protect the captive shippers and others that the CURE legislation addresses?

Do you think that with proper flexibility and scrutiny by the ICC and involvement of the ICC, that those difficult matters that are very real can be handled?

Ms. PHILLIPS. Yes, I do. I believe the Staggers Act does provide the Commission with the flexibility and the specific remedies that are necessary. And if I were confirmed by the Senate, I would take the responsibility very seriously of carefully evaluating what the Commission is doing with respect to captive shippers under the Staggers Act in accordance with the Congressional intent.

Senator EXON. My last question, Ms. Phillips, has to do with revenue adequacy, which plays a very real determination, I suggest,

with regard to what can and cannot, what should and should not, be done. What role do you believe the ICC's revenue adequacy determination plays in assessing the health of the railroad industry?

Ms. PHILLIPS. Well, the revenue adequacy standard as I understand it is the basic determinant of the extent to which rates are regulated in the industry. I understand there may be some problems with the standard.

The Commission right now looks at the cost of capital for an individual railroad in determining whether that railroad is revenue adequate. But my understanding is that this is considered by most financial analysts to be the most appropriate measure of measuring the long term financial viability of a particular enterprise.

I know the ICC has taken steps to modify its revenue adequacy standards recently in some respects with regards to the consideration of some types of taxes. But I think it is appropriate to take a further look at the revenue adequacy standard to make sure that it is a reasonable standard.

Senator EXON. Ms. Phillips, there may be some additional questions for the record that we would appreciate your answering as promptly as you can.

Ms. PHILLIPS. Yes, Mr. Chairman.

Senator EXON. I do have some questions that would be submitted to you specifically, submitted by Senator Kerry, who could not be here.

Just let me say, I think this has been a very interesting and very informative session. I think that you have sensed the concern of many members of this committee in this regard.

I like the way that you answer questions. I am pleased to tell you that I intend, or at least am inclined at this time, pending a review of the total record, to support your nomination by the President.

Having said that, I simply wanted to say to you, if we confirm you, then you are a very intelligent, strong-willed person, who I think has a basic understanding of the law. I would hope from time to time you would feel that those of us who might contact you are not trying to dictate, to infuse our will or our opinions upon you, but the role that most of us take in this area is we just that we want to make sure that the members of the ICC have an understanding of at least what our interpretation was of the Staggers Act.

And I think that it is very clear in my mind that the Staggers Act, while it has been a very good Act, has some problems with regard to certain segments of our society, and we expect the ICC to do a thorough job of investigating abuses and taking appropriate action that we think the ICC can take under the Act.

With that, I have no further questions.

Senator Packwood.

Senator PACKWOOD. No questions, Mr. Chairman. I hope that we can get the remaining members who have questions to submit them very quickly so that Karen can answer them and we can get to a markup on her nomination.

Thank you.

Senator EXON. I think that is a good point. I would ask the staff to contact all members of the subcommittee and the committee to get the questions in. We should do that in the next day or so.

And then we will submit them to you and ask for your prompt reply as soon as you can give it to us.

Thank you very much for being here.

Ms. PHILLIPS. Thank you very much.

Senator EXON. We are adjourned.

[Whereupon, at 10:50 a.m., the committee was adjourned.]

[The following information was subsequently received for the record:]

PREHEARING QUESTIONS OF THE MAJORITY AND THE ANSWERS

1. Question: The biographical data you provided the Committee indicates that a number of your published writings while a staff member at the U.S. Department of Transportation dealt with motor carrier service, including at least one assessment of the impact of the Motor Carrier Act of 1980. As you have continued to follow this issue, would you please summarize your views regarding the impact of the Motor Carrier Act of 1980? What particular strengths or weaknesses might you identify in this area?

Answer: The Motor Carrier Act of 1980 has successfully met the goals established by Congress in the Act. Clearly, there have been winners and losers as a result of deregulation but, on balance, I believe the Act has been a success. For example:

(1) there is more competition in the trucking industry, both in terms of the number of new carriers providing service and the price/service options provided by all carriers; and

(2) carriers' operations are more efficient because the Act eliminated operating restrictions that hampered their abilities to provide efficient, low-cost service.

However, there have been numerous bankruptcies of trucking companies since 1980. It is important to note that the 1980 Act is not solely responsible for these bankruptcies. Rather, the economy entered a serious recession in 1981, just as the reforms of the 1980 Act were being put into place. The recession caused a significant drop in freight tonnage, which made it impossible for many carriers to continue to compete. Trucking company bankruptcies have continued into 1988, but service availability does not appear to have been seriously disrupted as a result of these bankruptcies.

2. Question: What are your views regarding the preservation of service to small communities under the Motor Carrier Act of 1980? What about the relative prices for this service?

Answer: Prior to enactment of the Motor Carrier Act of 1980, the majority of trucking service to small communities was not provided by general commodities carriers regulated by the Interstate Commerce Commission (ICC). Rather, small communities

relied heavily upon United Parcel Service (which has not been regulated to as great a degree as other common carriers), other small package carriers, and private carriage. Therefore, small communities did not have much common carrier trucking service to lose as a result of deregulation.

The Motor Carrier Act of 1980 contained a number of provisions designed to enhance trucking service to small communities, including easier entry for trucking companies seeking to provide service to a small community not regularly receiving service or where rail service has been abandoned, or to carry packages up to 100 pounds.

The research to date indicates that most shippers in small communities receive service that is as good as or better than the service they received prior to 1980. (A survey of recent studies on this issue is included in a May 1988 Federal Trade Commission Bureau of Economics staff report, "Deregulation in the Trucking Industry.") There is not a great deal of information on rates paid by shippers in small communities, but the available evidence indicates that these shippers have benefited from the pricing flexibility provided by the 1980 Act.

3. Question: How do you view the general financial health of the trucking industry since enactment of the Motor Carrier Act? Do you have an opinion as to whether or not price discounting is serving to concentrate market shares within the trucking industry? Do you have any views as to the existence of predatory pricing within the trucking industry?

Answer: I would characterize the trucking industry's overall financial condition today as adequate. It is important to note, however, that the trucking industry is very large and has many distinct component -- it is, in fact, many industries. Thus, one must be careful about making statements about the financial condition of the "trucking industry."

Under deregulation, most new entry into the trucking industry has occurred among truckload (TL) operators, not less-than-truckload (LTL) operators. Truckload operators not only compete with each other but they also compete against rail carriers for their shipments, which further serves to keep their profit margins low. By contrast, many large LTL carrier have become more efficient and continue to earn

acceptable profits (although some LTL carriers have also gone out of business).

I am aware of no evidence that indicates that price discounting has resulted in increased concentration within the trucking industry. Likewise, the best available evidence shows that there is no predatory pricing within the trucking industry. In fact, predatory pricing rarely occurs in practice in any industry, and there is no reason to believe that trucking is particularly susceptible to predatory practices. Indeed, barriers to entry into the trucking industry -- such as costs involved in providing terminals and equipment -- are low. In addition, trucking companies have profitable and less risky alternatives to predation as a means of expansion, such as mergers with existing carriers or entering new markets. In sum, the 1980 Act has made it difficult for motor carrier to reap any gains from engaging in predatory pricing behavior.

The May 1988 FTC study cites research showing that some motor carriers have used discount pricing not to drive rivals from the market, but, rather, to promote new services and to reflect the lower costs of serving high-volume or frequent shippers.

4. Question: What are your views on the role of collective ratemaking within the trucking industry?

Answer: At present, collectively set rates serve more as a "benchmark" from which rate discounts are established for some shippers. However, the ability of carriers to continue to meet collectively and set joint-line rates and general rates is anti-competitive.

I believe, however, that any proposal to eliminate the remaining trucking industry antitrust immunity should continue to allow the rate bureaus to file tariffs and perform other administrative, non-competitive functions.

5. Question: What entry standards do you believe should be applied for motor carriers of freight?

Answer: Motor carriers should be required to meet safety fitness standards and prove that they meet the minimum insurance standards of the 1980 Act. A meaningful safety fitness test, however, is critical.

6. Question: What correlation, if any, do you see between safety and the ICC's regulatory activities insofar as motor carriers are concerned?

Answer: There is no direct correlation between economic regulation and the safety performance of motor carriers. What is critical is the enforcement of meaningful safety regulations by the U.S. Department of Transportation and State agencies. Legislation enacted by Congress in 1984 and 1986 should help meet this important goal.

7. Question: Licensed transportation property brokers have grown in number from less than 100 prior to passage of the Motor Carrier Act of 1980 to more than 6,000 today. How do you view the ICC's role in regulating the activities of brokers?

Answer: In general, I believe shippers and receivers can recognize which brokers are reputable and which are not. The vast majority of brokers are responsible and provide a useful function. I am aware, however, that there have been complaints about disreputable practices of some brokers. The Transportation Brokers Conference of America, which represents roughly 1,400 brokers, is taking steps to address this situation. If problems persist, I believe it would be appropriate for the ICC to examine this situation. However, the ICC's overall role in regulating brokers is minimal since the brokerage industry was largely deregulated by the 1980 Act.

8. Question: The ICC has recently been called upon to consider the reasonableness of rates sought to be applied retroactively to shippers for transportation service rendered at negotiated but unfiled rates. This "negotiated rates" or "undercharge" issue has generated a great deal of controversy. What are your views on this issue and the ICC's authority in this area?

Answer: The trucking "undercharge" issue, which has arisen primarily from motor carrier bankruptcies and financial reorganization proceedings, is a matter of concern to the shipping community and one that needs to be addressed quickly. The fundamental problem is the "filed rate doctrine," which prohibits variations from filed tariffs. Typically, shippers and carriers have negotiated rates, but carriers have failed to file them with the ICC. After the carrier goes bankrupt (or enters into reorganization), the shipper

is sued by a collection agent for the higher transportation charges listed on the tariff.

The ICC has procedures for addressing this matter, but only when such issues are referred to it by the courts. While most courts refer these issues to the ICC, some do not, which leads to inconsistent treatment of shippers, depending upon which court they are brought before in the collection actions.

The National Industrial Transportation League has filed a Petition for a Declaratory Order seeking a finding by the ICC that it is an unreasonable practice (and therefore a violation of the Interstate Commerce Act) for a motor common carrier to conduct business on the basis of a negotiated and agreed-upon rate while failing to publish the rate in a tariff on file at the ICC. As this case is pending before the Commission, I do not believe would be appropriate for me to discuss it any further.

I also understand that a coalition of shippers in conjunction with truckers have developed a compromise proposal that is now being circulated. Under this proposal, courts considering undercharge claims on behalf of bankrupt carriers would be required to refer the matter to the ICC, whose decision would be final on that issue. I believe some modifications may be needed to this proposal to ensure that it achieves the desired result, but, in the interests of clarifying this situation quickly, I believe Congress should consider enacting legislation to address this issue.

9. Question: How do you generally view the impact and implementation of the Household Goods Transportation Act of 1980?

Answer: The Household Goods Transportation Act of 1980 was intended to reduce Federal regulation of the household goods moving industry. In general, the goal of the legislation was to provide opportunities for new and improved service to the public and to improve the financial condition of the household goods moving industry.

Based on testimony received at the Senate Commerce Committee's oversight hearings on the Household Goods Act, the Act appears to be working well. The household goods moving industry has become more competitive: carriers are providing customers with new and improved services at competitive prices.

These new services include binding estimates, pickup and delivery guarantees, and full-value replacement cost insurance. In addition, customer complaints to the ICC have fallen sharply since 1980.

With respect to the ICC's implementation of the Act, the Commission moved swiftly to implement its key provisions. I am not aware of any major problems which have arisen as a result. Some in the industry, however, have advocated closer ICC scrutiny of industry pricing practices to ensure that predatory behavior does not exist.

10. Question: How do you generally view the impact and implementation of the Surface Freight Forwarder Act of 1986?

Answer: The Surface Freight Forwarder Deregulation Act of 1986 was enacted to enable surface freight forwarders that deal with general commodities to compete more effectively with other providers of transportation services and to improve the financial health of the industry. Prior to deregulation, the freight forwarder industry was subject to nearly the same regulatory requirements that were imposed on the industry in 1942. However, the freight forwarders' competitors, such as shipper agents, shipper associations and transportation brokers, as well as the underlying modes of transportation used by freight forwarders, had their regulatory burdens eased. For many freight forwarders, deregulation was necessary in order for them to survive in the competitive transportation marketplace.

The Act is working well and I am aware of no problems which have arisen as a result of its implementation by the ICC.

11. Question: As you know, the ICC recently approved an integration of the nation's two largest bus companies, Trailways Lines, Inc., and Greyhound Lines. How do you see the state of interstate bus transportation in light of this merger and other factors such as the Bus Regulatory Reform Act of 1982?

Answer: In passing the 1982 Act, Congress sought to ensure a financially viable intercity bus industry that could meet the needs of the traveling public. In general, the Act has proven successful in meeting this goal. However, not all bus companies have been able to overcome the financial difficulties they

experienced prior to enactment of this legislation. Unfortunately, Trailways, Inc., was one such carrier.

In light of the fact that Trailways was no longer a financially viable entity, I believe the Commission had no choice but to grant the consolidation petition of Greyhound and Trailways in order to ensure the continuation of service formerly provided by Trailways. In addition to continuing to provide this service, Greyhound withdrew all Trailways abandonment applications on routes where there was no replacement service operating, initiated new interline services with rural community transit providers, made a variety of improvements in the nationwide bus system, and provided jobs to the majority of Trailways' former employees.

Clearly, this integration raised some competitive concerns given the size of the carriers involved and the nature of competition within the regular-route sector of the intercity bus industry. However, given Trailways' financial situation, and the fact that its situation was unlikely to improve, this integration is unlikely to have a major impact on competition in the industry.

In addition, new bus lines continue to face substantial competition from other modes. Airlines, Amtrak, and the passenger automobile are the intercity bus industry's major competitors. In addition, a number of local and regional regular-route and charter bus companies provide competitive services. Therefore, competition continues to exist and bus fares should remain low.

It is important to recognize that our transportation system may be able to support only one nationwide intercity bus operator. However, the 1982 Act provides carriers freedom to initiate innovative services. Such services -- including joint ventures and feeder service in rural areas -- should be encouraged. In addition, I believe we must ensure that terminal access does not become a major competitive barrier.

12. Question: What criteria would be important to you in evaluating proposals that may be presented to the ICC seeking authority to discontinue bus service for certain interstate routes?

Answer: The Commission should be guided by the criteria enumerated in the Bus Act for abandonments of certain interstate routes. These criteria include:

(1) whether continuing the transportation without the proposed abandonment would be an unreasonable burden on interstate commerce (most notably, whether interstate and intrastate revenues from the service are less than the variable costs of providing the service);

(2) the national transportation policy, which requires the ICC to balance the goal of encouraging sound economic conditions among carriers with meeting the needs of passengers and shippers;

(3) whether the carrier has received an offer of or is receiving financial assistance to provide this transportation; and

(4) whether the transportation is the last bus service to a point and whether a reasonable alternative is available.

It is important to remember that freedom to exit a market is an important incentive to carriers to introduce new types of service. If a carrier is unable to discontinue unprofitable service, as was often the case prior to enactment of the 1982 Act, that carrier is unlikely to initiate innovative new services.

13. Question: How do you believe the Staggers Rail Act of 1980 has worked in its goal of improving the health of the nation's rail industry? How has it worked in terms of ensuring the continuation of service to shippers at reasonable rates?

Answer: The Staggers Act was intended to strengthen the financial condition of the railroad industry. The Act has been generally successful in meeting this goal. The railroad industry has become somewhat stronger financially and a more viable competitor with other modes (through the pricing freedoms embodied in the Staggers act and, especially, its contract rate provisions). It is difficult to make generalizations about the railroad industry's financial condition. Some large railroad holding companies -- for example, the Norfolk Southern and the Union Pacific -- appear to be doing quite well.

Other companies, such as the Southern Pacific, are not doing well financially. It is also important to recognize that the nation's railroads overall still are not particularly strong and that the share of intercity freight transported by railroads has declined somewhat.

With respect to service to shippers at reasonable rates, the Act provided rail carriers with greater pricing flexibility. Shippers generally have fared well since deregulation, although some concerns remain, such as ensuring adequate protection for "captive" shippers and reasonable "competitive access" for competing rail carriers.

14. Question: How do you believe the Staggers Rail Act has affected competition within the rail industry? Do you have a general view as to the ICC's actions in the area of "competitive access?"

Answer: Although there has been consolidation in the industry, the Staggers Act has resulted in greater competition among rail carriers. This competition has benefited the shipping community. For example, as a result of Staggers, contracts between shippers and carriers have become common. Such contracts provide shippers with service and rate guarantees while, at the same time, ensuring railroads a stable traffic base. Many shippers have also seen reductions in their rates since deregulation.

While there have been a number of rail mergers, these actions have strengthened the competitive viability of these carriers. In addition, a number of new regional and short-line carriers have been created, providing further competition within the industry.

With respect to the "competitive access" question, the ICC has taken action in recent years on the issues of new construction, mandatory switching, and joint rates. I have not studied the ICC's actions in detail.

15. Question: How do you believe the ICC has exercised its authority in reviewing applications for merger authority by railroads? What criteria do you believe should be used in reviewing merger applications?

Answer: The standards embodied in the law that emphasize the competitive implications of proposed rail mergers are reasonable. In addition, if

confirmed, I would carefully consider the Department of Justice's views on the competitive implications of proposed mergers, especially those that would have a major effect on the industry's structure.

I have not had the opportunity to study each rail merger case that has come before the Commission. As a general matter, however, I would not be as concerned about end-to-end mergers as I would be about parallel mergers.

16. Question: The ICC has sought to exempt certain line sales by railroads to non-rail carriers from its prior review requirements. As you know, this has generated a great deal of controversy, particularly insofar as transactions of large scope are concerned. How do you view this issue and the ICC's recent actions with regard to the notice that may be required in these cases? Do you believe that anything more needs to be done in this area?

Answer: While I support the promotion of competitive rail service, especially in cases where service would be discontinued absent a line sale, I believe the Commission must be careful about exempting such sales from its prior review requirements. I have not had the opportunity to study the ICC's recent actions in this area, but, if confirmed, I would examine this issue thoroughly.

17. Question: Please comment on your views regarding labor protection when railroad line sales, abandonments or requests for merger authority are considered.

Answer: Collective bargaining agreements should be relied upon to the extent possible in railroad line sales, abandonments, and requests for merger authority. The ICC's goal should be to create a viable railroad industry so that rail carriers will be able to retain jobs for the majority of their employees. These interests must be carefully balanced in the context of the facts of each individual case that comes before the Commission.

18. Question: Recent court decisions have cited a tension between the Interstate Commerce Act and the Railway Labor Act in calling into question the authority of the ICC to approve railroad line sales in the absence of collective bargaining in cases

where the ICC has elected against the imposition of labor protection. Do you have any views regarding this matter?

Answer: In general, I believe that the collective bargaining process should be relied upon to protect the interests of railroad employees. This is a complicated and emotional issue, however, that I would like to examine further before expressing an opinion on it.

19. Question: Do you have any views regarding the ICC's actions to date in implementing the recommendations of the Railroad Accounting Principles Board?

Answer: I have not had the opportunity to examine the recommendations of the Railroad Accounting Principles Board in detail or the ICC's actions to date in implementing these recommendations. However, I understand that the Commission has expressed its commitment to "expeditious implementation of the Board's principles."

20. Question: The so-called Long-Cannon factors contained in the Staggers Act seek to ensure that captive traffic is not being improperly used to subsidize competitive traffic. How do you view the purpose of the Long-Cannon factors and their application to the ICC?

Answer: Under the Long-Cannon Amendment, when determining the reasonableness of a rate, the ICC is to consider:

"(1) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts to minimize such traffic;

"(2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues of such traffic; and

"(3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues."

I support the Long-Cannon Amendment. Railroads have an incentive to minimize the amount of traffic that does not contribute to "going concern value" (a rate that at least covers the incremental cost of providing the service). Rail carriers cannot be made revenue adequate only by increasing rates on traffic where shippers have few viable transportation alternatives. If confirmed, I will work to ensure that the ICC considers the Long-Cannon factors in making determinations of whether a rate is reasonable.

The Long-Cannon factors provide an important safeguard for captive shippers. These factors were the result of intense negotiations between Congress and the industry and should not be tampered with lightly.

21. Question: How do you view the ability of small shippers to make a case before the ICC? Do you have any comments on actions by the ICC insofar as they relate to small shippers and rate reasonableness proceedings?

Answer: I have not had the opportunity to examine the ICC's record on cases brought by rail shippers who tender small volumes of freight. However, I believe such shippers are entitled to the same fair and expeditious consideration of their cases by the ICC as other petitioners. If confirmed, I would work to this end.

In addition, I believe the Commission can be of assistance to these shippers (as well as other parties) with respect to answering questions about such matters as ICC practices, procedures, and provisions of law, particularly through the Commission's Office of Public Assistance.

22. Question: As you know, proposals to sunset the ICC are predicated on further deregulation of the trucking industry and transfer of the ICC's rail authority to the Department of Transportation and, possibly the Federal Trade Commission. What are your views on sunset? As one who has worked at the Department of Transportation, how would you view the department's ability to adjudicate rail issues?

Answer: I support the President's program, which calls for sunset of the Commission. With respect to

the Commission's rail functions, I believe the Department of Transportation would most likely need to restructure its current rail operation and significantly increase resources available to this operation.

23. Question: What criteria do you believe to be important in reviewing a request for authority to abandon a segment of rail line? Do you believe consideration of line-specific financial data is either necessary or appropriate?

Answer: I believe the abandonment standards contained in the law are ~~reasonable~~ and appropriate. These allow the Commission to approve abandonment requests only if the ICC finds the abandonment consistent with the public convenience and necessity. The law also requires the Commission to consider whether the abandonment will have a serious adverse impact on rural and community development. I have not studied in detail the issue of whether consideration of line-specific financial data is necessary, although my inclination is that such information may be helpful to the ICC in making abandonment decisions.

24. Question: The ICC recently voted to launch an investigation into the rail car purchase aspect of an application by Trailer Train Company for continued authority to participate in a pooling agreement for railroad flat car and other service. Please describe any of your views or contacts with regard to this matter.

Answer: I have not had the opportunity to study this matter in detail, but from what I know about it I believe it is an appropriate issue for the Commission to investigate. This is especially true since, according to press accounts, the Department of Justice has indicated to the ICC that further study is warranted. I have had contact with representatives of The Greenbrier Companies only on procedural matters and have met once with a Trailer Train representative on general issues relating to the case. Since this case is pending before the Commission, I do not believe it would be appropriate for me to discuss it further at this time.

25. Question: Are there any areas in which you would either propose or favor a reduction in the ICC's regulatory activities?

Answer: I support the President's program, which calls for the elimination of economic regulation of the trucking industry and eventual sunset of the Interstate Commerce Commission.

26. Question: Are there any areas in which you believe the ICC should be taking a more active enforcement role?

Answer: I believe the Commission should take an active enforcement role when conditions warrant. The "negotiated rates" issue in the trucking industry is such a case. If confirmed, I would want to review the ICC's records, particularly with respect to consumer complaints, to ensure appropriate levels of enforcement activity by the Commission.

PREHEARING QUESTIONS OF SENATOR ROCKEFELLER AND THE ANSWERS

1. Question: Do you believe that trucking deregulation has worked well? In what ways do you believe it has? In what ways do you believe it has not?

Answer: The goals of the Motor Carrier Act of 1980, as stated in the national transportation policy added by section 4 of the Act, were to promote competitive and efficient transportation services in order to:

"(1) meet the needs of shippers, receivers, and consumers;

"(2) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public;

"(3) allow the most productive use of equipment and energy resources;

"(4) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

"(5) provide and maintain service to small communities and small shippers;

"(6) improve and maintain a sound, safe, and competitive privately-owned motor carrier system;

"(7) promote greater participation by minorities in the motor carrier system; and

"(8) promote intermodal transportation."

Overall, I believe the Motor Carrier Act of 1980 has been successful in meeting these goals. This statement does not, of course, imply that every motor carrier or shipper has benefited equally from deregulation. (For a review of the academic and governmental studies on the effects of trucking deregulation, see a May 1988 Federal Trade Commission (FTC) Bureau of Economics staff study, "Deregulation in the Trucking Industry.")

There can be no doubt that the Motor Carrier Act of 1980 has brought more competition to the trucking industry. According to Interstate Commerce Commission (ICC) data, more than 80,000 new certificates have been granted since 1980. In addition, the Act allowed carriers greater pricing freedom, which has resulted in more competitive services for many shippers. Numerous studies show that shippers, including those in small towns and rural areas, generally are receiving service as good as or better than the service that was available to them before 1980. Lastly, the Act removed burdensome operating restrictions -- such as limitations on the routes over which a carrier could travel or the commodities the carrier could haul. These restrictions hampered carriers' abilities to provide efficient, cost-effective service.

There have been numerous bankruptcies of trucking companies since 1980. These bankruptcies, however, cannot be blamed solely on the 1980 Act. The U.S. economy entered a serious recession in 1981, just as the reforms of the 1980 Act were being put into place. The recession caused a significant drop in freight tonnage, which made it impossible for many carriers to continue to compete. Trucking company bankruptcies have continued into 1988, but there do not appear to be any significant service failures as a result of these bankruptcies.

Finally, safety in the trucking industry remains a serious problem. This is not, however, due to economic deregulation, but rather the lack of enforcement of safety regulations. In fact, the report of a conference held last summer at Northwestern University showed that reduced economic regulation has not led to a deterioration of safety in the trucking industry. Nevertheless, trucking safety must be improved. Legislation enacted by Congress in 1984 and 1986 will take significant steps toward meeting this important goal.

2. Question: Do you believe that railroad deregulation has worked well? In what ways do you believe it has? In what ways do you believe it has not?

Answer: Prior to enactment of the Staggers Rail Act of 1980, the railroad industry was experiencing extreme financial difficulties. While ensuring that shippers were protected from possible abuses of market power, the Staggers Act was an effort by Congress to improve the financial performance of the railroad industry and reduce the need for any additional federal subsidy.

As stated by Congress in section 3 of the Staggers Act, the goals of this legislation were:

"(1) to assist the railroads of the Nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense;

"(2) to reform Federal regulatory policy so as to preserve a safe, adequate, economical, efficient, and financially stable rail system;

"(3) to assist the rail system to remain viable in the private sector of the economy;

"(4) to provide a regulatory process that balances the needs of carriers, shippers, and the public; and

"(5) to assist in the rehabilitation and financing of the rail system."

The Staggers Act has enabled the railroad industry to become somewhat stronger financially and a more viable competitor with other transportation modes (although the industry's share of intercity traffic has declined somewhat). Indeed, without the Act, many industry analysts believe that it would have been impossible to transfer Conrail to the private sector. Moreover, without the pricing freedoms afforded by the Act, the 1981-1982 recession would have had a devastating impact on the financial viability of large sectors of the rail system.

3. Question: In what ways do you believe that trucking deregulation has fulfilled Congress' expectations in passing the Motor Carrier Act? In what ways has trucking deregulation not fulfilled Congress' expectations?

Answer: In passing the Motor Carrier Act of 1980, Congress intended that the motor carrier industry become more competitive and efficient. Competition has increased dramatically in the truckload (TL) sector (large shipments that go directly from shipper to receiver and are generally not consolidated with other shipments). In the less-than-truckload (LTL) area, we have not seen new companies enter the industry, but competition among existing carriers has increased, since many LTL carriers have expanded service and entered new markets, providing a variety of price and service options to shippers.

I believe the Act has met Congress' expectations. To the extent that the industry has

not become quite as competitive as Congress may have envisioned, I would attribute that to the continued existence of antitrust immunity for certain trucking industry collective ratemaking activities. While it is true that collectively-set rates now serve more as a "benchmark" from which rate discounts are established for large-volume shippers, the ability of carriers to continue to meet collectively and set joint-line rates and general rates is anti-competitive.

4. Question: In what ways do you believe that rail deregulation has fulfilled Congress' expectations in passing the Staggers Act? In what ways has rail deregulation not fulfilled Congress' expectations?

Answer: The railroad industry has become more financially viable and a stronger competitor (because of the pricing freedoms contained in the rate provisions of the Act) with other transportation modes since enactment of the Staggers Act. However, despite these gains, the share of intercity freight transported by railroads continues to decline.

Shippers using rail services also have generally fared well since deregulation, although a number of troubling issues remain, such as ensuring adequate protection for "captive" shippers and reasonable "competitive access" for competing rail carriers.

5. Question: Please describe your own philosophy of whether there is a proper role for economic regulation of transportation, and if so, what is that role?

Answer: Economic regulation of transportation is appropriate in cases where a transportation company is so dominant that it can effectively dictate price and service conditions to its customers or where it can engage in conduct that is intended to drive a competitor from the market. Economic regulation at this time is more appropriate in the rail industry than in trucking, since the relative ease of entry into and exit from the trucking industry reduces the possibility of unfair conduct and ensures that shippers have alternative service options available to them.

6. Question: How important is a sound and economical transportation system to our nation's ability to compete at home and in world markets? Is this

something the Interstate Commerce Commission ought to consider in administering the laws? In what way?

Answer: A sound and economical transportation system is vitally important to our nation, in terms of both domestic and foreign competition. Transportation costs make up a significant proportion of the delivered price of most products and commodities. Thus, anything the ICC can do to promote a more efficient (i.e., low cost) transportation system will improve our nation's ability to compete at home and abroad.

7. Question: How would you assess the current financial health of the trucking industry? Its long-term prospects? The rail industry, particularly the large Class I railroads? Its long-term prospects?

Answer: It is important to remember that the trucking industry is very large and has many distinct components -- it is, in fact, many industries. Thus, one must be careful about making characterizations about the financial condition of the "trucking industry." Entry into the trucking industry has occurred among TL operators, not LTL operators. Truckload operators not only compete among themselves, but they often compete with rail carriers, which serves to keep their profit margins low. By contrast, many existing large LTL carriers have become more efficient, expanded services, entered new markets, and continue to earn acceptable profits (although some LTL carriers have also gone out of business). In sum, I would characterize the trucking industry's overall financial condition as adequate.

I am optimistic about the trucking industry's long-term financial prospects. For example, a 1986 survey conducted for Fortune magazine found that, "Over half (55 percent) of all shippers surveyed felt that the overall performance of the trucking industry today is better than it was five years ago. Perhaps this can be attributed to the expanded service features and rate options which truck carriers have developed recently in response to relaxed government restrictions." (Fortune, Market Research Study, "Trucking's Role in Business, 1986, page 6.) Other surveys also have found that most shippers are generally satisfied with the rate and service options that are now available to them.

Finally, in recent years, there have been major changes in the way U.S. manufacturers conduct their transportation activities. More manufacturers are relying upon "just-in-time" production techniques to reduce inventory-holding costs. In order for just-in-time logistics arrangements to work satisfactorily, however, trucking companies must provide responsive and low-cost service. The trucking industry appears to be accommodating shippers' transportation needs quite well, and there is every reason to believe that the industry will continue to do so.

It is also very difficult to make generalizations about the railroad industry's financial condition. Some large railroad holding companies -- for example, Norfolk Southern and Union Pacific -- appear to be doing quite well. Other companies -- Southern Pacific, for example -- are not doing well financially. It is my impression -- and I have not studied the financial returns of the major railroad holding companies in detail -- that the energy and real estate operations of these companies are more profitable than are their railroad subsidiaries.

I believe that the rail industry will face serious challenges in the years ahead. Trucking deregulation has made the highly competitive transportation marketplace even more competitive. Thousands of motor carriers have entered the industry since 1980 and thousands more have expanded service. This new entry has occurred primarily in the truckload sector, the sector that competes directly with railroads. Moreover, any further reduction in constraints on truck sizes and weights will increase motor carrier productivity and lower operating costs. Many trucking companies also have altered work rules and wage scales, with a view to increasing productivity and reducing operating costs.

To meet the challenge of motor carrier competition, rail carriers will have to maintain tight control over costs, increase productivity, and, in certain situations, work cooperatively with motor carriers to provide shippers with intermodal services. Further, unless the industry works to improve its long-term competitive viability, it runs the risk of becoming even more dependent upon bulk commodity movements, such as coal, farm products, minerals, and chemicals. To achieve higher earnings and reduce the adverse financial impact of the

business cycle, rail carriers must achieve a more diversified traffic base. But, to accomplish this goal, rail carriers will have to improve their overall level of service and maintain even tighter control over costs. Finally, the railroads need the pricing freedoms embodied in the Staggers Rail Act. Without the ability to adjust their rates in response to changing market conditions, rail carriers will be unable to compete against truck and barge operators.

8. Question: Please assess the performance of the ICC to date in implementing the Staggers Act. What have been its most important achievements? What have been its most significant weaknesses?

Answer: The Staggers Act is a very complicated piece of legislation that requires the ICC to consider and balance a number of objectives. In the area of ratemaking, for example, the Staggers Act embodies four major goals:

(1) to help the railroads achieve revenue adequacy;

(2) to protect "captive" shippers;

(3) to relax rate regulation on competitive traffic; and

(4) to ensure that railroads are attaining maximum revenues on their competitive traffic (i.e., the Long-Cannon Amendment).

In any given situation, it may be difficult for the ICC to accommodate all of these objectives.

Once the Staggers Act was enacted, the ICC moved quickly to institute rulemaking proceedings to implement it. In the area of maximum rate regulation, the ICC has adopted a set of theoretical standards (for example, stand-alone costs, Ramsey pricing) that are designed to ensure that railroads have maximum pricing flexibility. These theoretical concepts are highly complex and may not be easily calculated. Moreover, the use of these concepts in regulatory proceedings is quite novel, and it may be necessary to make refinements to them once a body of case law has developed. The ICC should be concerned that it does not raise the burden of proof in maximum rate proceedings so high that truly captive shippers are unable to obtain adequate rate relief.

The ICC should continue to focus on defining standards for determining whether a rail carrier is market dominant, which is defined as the absence of effective competition from other carriers or modes of transportation to which a rate applies. If the ICC can define a consistent set of principles to determine whether a rail carrier is market dominant, it will have gone a long way to ensuring adequate protection for captive shippers. We do not, obviously, want to create a situation where a rail carrier can set unreasonable rates because the ICC has found that it is not market dominant.

I think the ICC should be given credit for attempting to develop a consistent set of maximum rate guidelines, even though these guidelines may be imperfect. It is important to remember that the railroad industry was in extremely poor financial condition when the Staggers Act was enacted and that the ICC moved quickly to provide the industry with pricing freedoms embodied in the Staggers Act and to remove unnecessary restraints on the industry's operations. The ICC should also be given credit for its implementation of certain features of the Staggers Act (e.g., its rules governing contract rates) that have been beneficial to both shippers and rail carriers.

9. Question: Without commenting on the substance of any proceedings currently pending before the ICC, please state what you believe are the most important priorities for the Commission today in the rail area.

Answer: There are two major issues facing the Commission in the rail area:

(1) ensuring that "captive" rail shippers receive adequate protection from the potential abuse of market power; and

(2) ensuring that mechanisms are designed to promote, where economically feasible, competitive access for rival rail carriers.

In addition, the various rail merger cases considered by the Commission are extremely important, since they will influence the structure of the industry.

10. Question: Do you believe the Staggers Act requires that the ICC strike a balance between the needs of shippers and consumers? Do you believe that the ICC has taken a balanced approach reflecting both the

needs of railroads and the needs of shippers and consumers? Please give specific examples.

Answer: The ICC has a responsibility to ensure that the objectives outlined in the Staggers Rail Act are followed. The ICC also has an obligation to ensure that rail carriers have maximum freedom to compete in the transportation marketplace consistent with the desire of Congress to protect shippers who do not have reasonable transportation alternatives. The ICC, moreover, has a responsibility to hear cases in a fair and impartial manner and as expeditiously as possible, consistent with the opportunity for all parties to present their views. Finally, I believe that the ICC has an obligation to make sure that its decisions are clearly expressed, pragmatic, and fully supportable on the basis of the evidence presented in the record.

I have not had the chance to review the major ICC decisions in enough detail to provide examples of whether the ICC has taken a balanced approach.

11. Question: What are the ICC's responsibilities to railroads? How has it carried out these responsibilities?

Answer: As expressed in the Staggers Act, the ICC is responsible for the following:

(1) allowing, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

(2) minimizing the need for Federal regulatory control over the rail transportation system and providing fair and expeditious regulatory decisions when regulation is required;

(3) promoting a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Commission;

(4) ensuring the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes;

(5) fostering sound economic conditions in transportation and ensuring effective

competition and coordination between rail carriers and other modes;

(6) reducing regulatory barriers to entry into and exit from the industry;

(7) requiring rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of general increases; and

(8) prohibiting predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination.

I believe the ICC has been exercising its responsibilities to the railroad industry in an acceptable manner.

12. Question: What are the ICC's responsibilities in the rail area to shippers and consumers? How has it carried out those responsibilities?

Answer: With respect to shippers and consumers, the Staggers Act requires the ICC to maintain reasonable rates where there is an absence of effective competition and where rail rates provide carriers with earnings that exceed the amount necessary to maintain the rail system and to attract capital. (See my answer to Question 8 for my views on how the ICC has been carrying out these responsibilities.)

13. Question: As you know, the current membership of the ICC has tended to split on 3-2 votes on many, if not most major issues. Do you see yourself as tending towards one side or the other of this split, or would you attempt to address each issue on its individual merits?

Answer: As an economist, I believe that less regulation is preferable when competition can be relied upon. I do not, however, see myself tending towards one side or the other of the ICC's 3-2 split. Each issue that comes before the Commission must be addressed on its merits. There is no clear "right" or "wrong" approach to many of the issues that come before the ICC; rather, the specifics of each individual case must be considered carefully within the context of the laws implemented by the ICC.

14. Question: If you found yourself in the majority on a particular issue, would you seek out and entertain comments or reactions from those in the minority?

Answer: I believe in the concept of a collegial body in which the views of all Commissioners should be taken into account. If I were in the majority on an issue, I would certainly seek out those in the minority for their views.

During my career in government, especially while I served on the Senate Commerce Committee staff, I have seen the importance of working with all interested parties, even if their views are in the minority. By providing everyone an equal chance to express his or her views, and have them incorporated into the final product, that product is improved.

15. Question: As you know, at times in recent years the ICC members have not met or discussed important issues with each other for long periods of time. Do you agree with this method of decisionmaking?

Answer: I do not agree with this type of decisionmaking. The ICC is a collegial body. In such an organization, the members benefit from hearing one another's views and discussing pending issues. If confirmed, I intend to encourage frequent and open communication among the Commissioners.

16. Question: The Administration has for several years now proposed the "sunset" of the ICC and the transfer of certain functions to the Department of Transportation. Do you agree with this position?

Answer: I have not studied the Administration's "sunset" proposals in detail, but I support the President's general program. If the Commission were "sunset," however, a number of functions would have to be transferred to one or more government agencies. For example, the Commission's remaining motor carrier safety fitness functions, household goods consumer protection responsibilities, and a broad range of rail-related functions should not be abolished.

17. Question: If you agree with the Administration's "sunset" goal, what will you do to promote that goal? If you disagree with the Administration's "sunset" goal, what will you do to dissuade the Administration?

Answer: I believe the question of whether or not to "sunset" some or all of the functions of the ICC is for the Administration and Congress to decide. If confirmed, I would provide the Administration and Congress whatever information requested on specific functions and duties of the Commission and the need therefor. I wish to emphasize, however, that if confirmed, as long as the ICC continued to exist, I would work to perform my duties within the mandate of Congress expressed in the Acts implemented by the Commission.

18. Question: Do you believe there is a role left for the ICC to play in the trucking area? Should truckers file and follow published tariffs?

Answer: Under the current motor carrier regulatory system, there is a role left for the ICC to play, most notably with respect to safety fitness determinations and its review of rates. I believe, however, that much of the remaining trucking regulation could be eliminated without harmful competitive consequences. Nevertheless, as long as these regulations are required by law, they should be enforced by the Commission.

In my view, trucking companies should not have to file and follow published tariffs. Carriers and shippers should be allowed to determine rates in the competitive marketplace. I am aware of proposals that would allow trucking companies to file tariffs electronically. I have not had a chance to study these proposals. But from what I know, it would appear to be desirable to develop some means of modernizing the tariff-filing requirement as long as it continues to exist.

19. Question: Do you believe that the trucking "undercharge" or "balance due" issue needs further action by the ICC? By Congress?

Answer: The trucking "undercharge" issue, which has arisen primarily from motor carrier bankruptcies and financial reorganization proceedings, is a matter of concern to the shipping community and one that needs to be addressed quickly. The fundamental problem is the "filed rate doctrine," which prohibits variations from filed tariffs. Typically, shippers and carriers have negotiated rates, but carriers have failed to file them with the ICC. After the carrier goes bankrupt (or enters into reorganization), the shipper

is sued by a collection agent for the higher transportation charges listed on the tariff.

The ICC has procedures for addressing this matter, but only when such issues are referred to it by the courts. While most courts are referring these issues to the Commission, several have been ruling against referral, leading to inconsistent treatment of shippers, depending upon which court they are brought before in the collection actions.

The National Industrial Transportation League has filed a Petition for a Declaratory Order seeking an ICC finding that it is an unreasonable practice (and therefore a violation of the Interstate Commerce Act) for a motor common carrier to conduct business on the basis of a negotiated and agreed-upon rate while failing to publish the rate in an effective tariff on file at the ICC. As this case is pending before the Commission, I do not believe it would be appropriate for me to discuss it any further.

I also understand that a coalition of shippers in conjunction with truckers have developed a compromise proposal which is now being circulated. Under this proposal, courts considering undercharge claims on behalf of bankrupt carriers would be required to refer the matter to the ICC, whose decision would be final on that issue. I believe some modifications may be needed to this proposal to ensure that is achieves the desired result, but, in the interests of clarifying this situation quickly, I believe Congress should consider enacting legislation to address this issue.

20. Question: What is your position on S. 676, the Consumer Rail Equity Act? What is your position on the need for some legislation to address the issues addressed in S. 676?

Answer: I have not had the opportunity to study the Consumer Rail Equity Act in detail. However, my general inclination is to try to avoid amending any major legislation whenever possible for fear that the original intent of that legislation may be distorted. While S. 676 raises a number of legitimate concerns, I believe these concerns are best addressed by the Commission, rather than by making major amendments to the Staggers Act.

21. Question: If you oppose the bill, S. 676, what specific provisions of the bill are most troublesome to you, and why? What specific provisions of the bill are least troublesome to you, and why?

Answer: While I cannot say that I oppose or support S. 676 at this time, I am concerned about the following provisions:

(1) Market dominance -- It does not appear that any modification of the market dominance guidelines are needed, since the ICC has sufficient flexibility to adjust its definition based on its expertise.

(2) Burden of proof in rate reasonableness cases -- Under current law, the burden of proof with regard to rate reasonableness is on the shipper in complaint cases. A reversal of that burden creates a presumption of unreasonableness and therefore is contrary to the principle of differential pricing.

(3) Transportation policy -- Rates should be set by regulation only in the absence of effective competitive constraints. There is no need to change the transportation policy on this point.

I am least concerned about the following issues raised by S. 676:

(1) Accuracy of inflation-based rate adjustments -- While productivity gains of the railroads are being shared with shippers through the process of negotiating individual rates, it may be useful to explore further the treatment of productivity gains in the Rail Cost Adjustment Factor.

(2) Revenue adequacy standards -- The ICC has had some modifications in the revenue adequacy standards, but this general issue merits further study.

22. Question: What is the mandate Congress gave the ICC in the area of competitive access, namely, joint rates, reciprocal switching and joint use of terminal facilities? Has the ICC faithfully carried out its mandate? Do you have any suggestions for improvement?

Answer: This is a very complicated area and one that I have not studied in detail. It is my impression, however, that much of the initial controversy over joint rate cancellations has subsided.

Reciprocal switching is the practice of one railroad switching (moving) another railroad's cars to load or unload them. Shippers have complained that reciprocal switching agreements have been abrogated and that switching fees have been raised excessively. The ICC may require rail carrier to enter into reciprocal switching agreements where it finds such agreements are practicable and in the public interest or where such agreements are necessary to provide competitive rail service. I believe that the ICC should use this authority whenever it is a viable way to maintain rail competition.

With respect to use of terminal facilities, the ICC may require terminal facilities owned by a rail carrier to be used by another carrier if the Commission finds that use to be practicable and in the public interest. The ICC may establish conditions and compensation for use of these facilities if the carriers are unable to agree on this matter. I believe this authority is an important tool for the ICC in promoting competition.

23. Question: Are you familiar with the competitive access compromise proposed by the Association of American Railroads and the National Industrial Transportation League, and adopted by the ICC? Do you believe this compromise has worked well? Is there room for improvement?

Answer: I am not familiar with the details of this compromise, although I understand its intent is to allow railrads to restructure routes to take advantage of efficiencies and lower costs while protecting shippers from actions that would eliminate competition. If a major shipper organization and a major industry organization have reached an agreement on this important issue -- and if the ICC has judged it to be in the public interest -- then I certainly think that its provisions should be relied upon to preserve competitive access.

24. Question: The electric utilities, state utility commissions, and consumer groups who support ICC reform say that all utility rail coal hauling costs are passed directly through to electricity ratepayers, and that any benefits of a rail rate reduction are also passed through to consumers. Do you agree? Do you consider this to be information that the ICC ought to consider in a rate reasonableness case?

Answer: To the best of my knowledge, no comprehensive study has been completed on the extent to which higher (or lower) rail rates for coal shipments are passed through to customers in the form of higher (or lower) electricity rates. It would, in my opinion, be very difficult to make a categorical statement about the likely effect of higher (or lower) rail rates on electricity rates, since the effect of changes in rail rates on electricity rates would depend on the size of the rail rate increase (or decrease), as well as how the public utility commission chose to accommodate the higher (or lower) rail rate.

Higher rail rates would increase a utility's costs. But whether the public utility commission allowed the utility to raise its electricity prices is another question. Higher electricity rates would, of course, reduce the demand for electricity, since the utility should be operating on the elastic portion of its demand curve. The public utility commission would also have to consider the impact of these higher electricity rates on consumers and industry in its service region.

A moderate increase in rail rates may not require the utility to seek authority from the public utility commission to raise its rates. In such cases the utility would bear the full cost of the increased rail rate, which would reduce the utility's profits (or increase its losses). If a railroad lowered its rates, the public utility commission may or may not force the utility to lower its electricity rates.

Again, I do not know of any comprehensive study that estimates the effect of higher (or lower) rail rates on the prices consumers pay for electricity.

25. Question: Do you believe the concepts of product and geographic competition are useful in screening out cases where the marketplace truly offers competitive forces that restrain a rail rate?

Answer: I believe that product and geographic competition can have an effect on rail rates, since alternative sources of supply can influence the range of options open to shippers and their demand for transportation. Product and geographic competition (not only the level of demand but also the elasticity of the resulting demand curve) should be evaluated in the context of the overall competitive environment facing the shipper -- intramodal competition (competition among rail carriers), intermodal competition (rail/truck or rail/barge), and product and geographic competition. However, the ICC's main role in this area is to evaluate all of the transportation options available to a shipper and how these options mitigate (totally or partially) one rail carrier's market power.

26. Question: How would product or geographic competition be relevant in a case brought by a grain elevator operator or coal producer? Please provide illustrative examples.

Answer: Product and geographic competition are market forces that limit the ability of railroads to exercise market power. Product competition exists when two or more products are close substitutes in production (an electric utility which can burn slightly different grades of coal, for example) or in consumption (a consumer that is indifferent as to whether he purchases oranges grown in Florida or in California). When faced by product competition, a rail carrier must consider whether its pricing actions will induce shippers and receivers to alter their demand for a particular product (with a view toward substituting another product that could be transported by a competitor) and, accordingly, their need for a particular rail carrier's services.

Geographic competition, too, is a competitive factor influencing rail rates. If, for example, a product available from two different regions sells at the same price in Chicago, the railroad that transports the shipments to Chicago from one region must be cognizant of whether its rates will put those shippers at a competitive disadvantage vis-a-vis the shippers from the other region.

While product characteristics and geographic alternatives often influence railroad pricing behavior, their implications can only be evaluated after a careful consideration of the economic and

competitive factors that influence a rail carrier's pricing policies.

Measuring the nature of competition in antitrust cases often focuses upon determining the size and geographic scope of the relevant market. Assessing the implications of product and geographic competition presents similar difficulties. Product characteristics and geographic considerations are economic forces that influence the ability of railroads to set rates above competitive levels. And while it is impossible to assess (or quantify) their influence in the abstract, product and geographic competition affect railroad pricing practices.

I have not reviewed all of the ICC's decisions regarding the use of product and geographic competition in rail rate cases. As a general principle, however, I believe that product and geographic competition should be given much less weight in deciding whether a rate is reasonable than evidence of intramodal or intermodal competition.

27. Question: Do you believe that the ICC's record in rate reasonableness cases -- just five decisions finding rates unreasonable -- is a fair reflection of the nation's rail freight rate structure? Are there really so few rates that are unreasonable?

Answer: I have not reviewed all of the ICC's rate reasonableness decisions so it is impossible for me to judge whether the Commission's five decisions finding rates unreasonable is a fair reflection of the nation's rail freight structure. However, I am troubled that almost eight years after the Staggers Act was enacted, the ICC has only found five rail rates that are unreasonable. The ICC may want to review its maximum rate standard, with a view to determining if its current procedures and standards are consistent with Congressional intent.

28. Question: Is there any principle or recommendations of the final report of the Railroad Accounting Principles Board (RAPB) with which you disagree?

Answer: I have not had the opportunity to review the RAPB's principles or recommendations in detail. However, it appears that the four general and four specific principles established by the Board, as well as the Board's recommendations to the ICC are reasonable. If confirmed, I would review these

recommendations carefully, as well as the ICC's implementation of these recommendations.

29. Question: Please review the RAPB's discussion of the so-called "double write-up" issue on pages 48-49 of Volume 2. The RAPB there says the ICC "should review the matter (including public participation by all interested parties)." Putting aside the merits of the issue, do you believe the ICC has an obligation to "review the matter" and apply in its review the conclusions and considerations discussed by the RAPB on this issue?

Answer: I believe the ICC should review this matter, being sure to consider the RAPB's conclusions and determinations.

30. Question: What is your understanding of the function of the Rail Cost Adjustment Factor (RCAF) in the Staggers Act? Is it not simply a shield from a rate reasonableness challenge for legitimate railroad cost increases? Isn't a railroad free to raise a rate above an RCAF-based increase without the need for any prior approval from any agency or shipper? Doesn't that rate remain legal until a shipper files a protest or complaint at the ICC which results in a Commission finding that the rate is unreasonably high?

Answer: Under the Staggers Act, railroads are allowed to seek recovery of inflationary cost increases with minimal regulatory involvement by indexing tariff rates. They recover such costs by using the RCAF. The RCAF is computed using an index of industry-wide railroad input prices comprised of labor, fuel materials and supplies, equipment rents, depreciation, and other expenses. The RCAF, however, does not include a productivity adjustment.

To replace the existing system of industry-wide rate increases (which was retained until April 1, 1982), rail carriers under the Staggers Act are authorized to increase individual rates to respond to cost increases without ICC review. The ICC is authorized, but not required, to prescribe a rate index or percentage increase that will be available to all carriers to cover inflationary cost increases. For the first four years after the effective date of the bill, each carrier was permitted to raise rates by an additional six percent annually (to a cumulative 18 percent) with limited ICC review. After the first four years, those carriers not earning adequate revenues (as defined by the ICC) are allowed to raise rates four percent annually, in addition to the cost-related increases.

I support the concept of granting the railroads freedom to raise rates in response to increases in their costs. In the late 1970s, inflation, combined with the ICC's "regulatory lag" in granting legitimate rate increases placed rail carriers in an untenable financial position. As a result, the industry's financial condition deteriorated significantly. Obviously, any sort of pricing zone for cost increases must be based on an accurate index

of industry costs and should be designed to ensure that rail carriers have an incentive to increase their productivity. In short, any cost recovery procedure adopted should not encourage "cost-plus" pricing, nor should rail carriers be denied all of the productivity gains they achieve.

POSTHEARING QUESTIONS OF THE MAJORITY AND THE ANSWERS

1. Question: At a recent hearing before the House Public Works Committee, ICC Chairman Heather Gradison was asked whether a proposal before the ICC to expand its definition of regulatory exempt commercial zones constituted a "back door" approach to further motor carrier deregulation. Chairman Gradison responded that this was not a "back door", but rather a "front door" approach to deregulation. Chairman Gradison's statement suggests her belief that the ICC holds considerable discretion in interpreting the Interstate Commerce Act. You are closely associated with efforts to further deregulate the trucking industry, a step which Congress has not yet been willing to take. How do you anticipate reconciling your views on motor carrier deregulation with the ICC's continuing regulatory role in this area?

   Answer: I favor further deregulation of the trucking industry, although as I stated at the Committee's June 7 hearing on my nomination, that is a decision for Congress to make. The Motor Carrier Act of 1980 provides the Commission with specific statutory parameters for motor carrier regulation. As long as the Commission continues to have regulatory authority over the trucking industry, I believe it should enforce these laws in accordance with the Congressional intent expressed in the 1980 Act.

2. Question: As you know, the Motor Carrier Act of 1980 retained antitrust immunity for certain collective ratemaking activities in the trucking industry. In your responses to pre-hearing questions, you state your view that these collective ratemaking activities are anti-competitive. If confirmed, how do you feel your views are likely to impact industry requests for approval of collectively-set rates?

   Answer: While I believe that collective ratemaking in the trucking industry is anti-competitive, price competition in the trucking industry today is vigorous. Under the Motor Carrier Act of 1980, trucking companies are allowed to engage in collective ratemaking activities for joint-line rates and general rate changes. If confirmed, I would review industry requests for approval of collectively set rates and act in accordance with the standards embodied in the 1980 Act.

3. Question: Under current law, a shipper who challenges a rail rate has the burden to prove the unreasonableness of the rate. Critics of this argue that this disadvantages shippers, since the railroads have access to all of the essential information in rate cases. What are your views on the issue of burden of proof as it relates to the ICC?

Answer: It is my understanding that shippers have the burden to prove the unreasonableness of rail rates in most, but not all, cases. Under current law (section 10701a of the Interstate Commerce Act), if the ICC determines that a railroad has market dominance:

(1) the shipper has the burden of proof if the rate is authorized under the zone of rail carrier rate flexibility and results in a revenue to variable cost ratio that is less than the statutory maximum revenue-to-variable cost ratio, or if the ICC does not begin an investigation to determine whether the rate is reasonable;

(2) the railroad has the burden of proving the rate is reasonable if the rate is greater than allowed under the pricing zone or is above the statutory revenue-to-variable-cost ratio, and the ICC begins an investigation proceeding to determine whether the rate is reasonable.

The Staggers Act emphasizes the need for railroads to have pricing flexibility. Given this philosophy, the division of the burden of proof in rate reasonableness cases appears to me to be reasonable. If a railroad is attempting to price its services above the levels otherwise allowed by the Act, it is appropriate that the carrier be required to prove the reasonableness of such rates. However, if a railroad's rates fall within the established guidelines, it is appropriate that shippers bear the burden of proof.

4. Question: You have declined to comment in your responses to pre-hearing questions on the ICC's actions in the area of rail "competitive access." However, an indication of your own regulatory philosophy would be helpful. How inclined do you feel you would be to regulate in those cases where competition is limited but not nonexistent? In other

words, do you feel that an absence of competition must be shown to warrant action by the ICC in areas like "competitive access"?

Answer: I believe the Staggers Act provided the Commission with meaningful tools to address the "competitive access" problem. Clearly, the need for Commission action in this area is greater when there is no effective rail competition; moreover, the consolidation of the railroad industry in recent years may have led to competitive situations that can only be resolved by allowing a railroad to operate over another carrier's tracks. Thus, in markets where there is limited rail competition, ICC action to ensure competitive access may be warranted. If confirmed, I would not hesitate to examine such cases and, if appropriate, take the steps necessary to ensure competitive access where feasible.

5. Question: In recent months, there have been allegations of shortages in the nation's supply and apportionment of covered rail hopper cars used to carry grain. Do you have any views on the ICC's role in this area?

Answer: There are two issues associated with the problem of grain car shortages:

(1) the size of the current fleet of covered hoppers; and

(2) how railroads should handle privately owned equipment.

I understand that the recent shortage of covered rail hopper cars was most pronounced between November 1987 and April 1988, largely due to two U.S. Department of Agriculture programs -- the Export Enhancement Program, and a special program for exchanging certificates for wheat -- that led to a large surge of exports. As a result, grain cars unloaded at ports during the first quarter of 1988 were up more than 75% over the same period in 1987. Railroads bore the brunt of the increased demand, because the Great Lakes and the Upper Mississippi were closed to navigation during the winter months. As soon as these waterways reopened, the pressure on the railroads declined. Thus, it appears that there is no need to increase the size of the national fleet of covered hoppers unless record levels of grain traffic continue.

With respect to privately owned equipment, I understand that many shippers bought their own cars in the 1970s and early 1980s as grain exports surged in order to ensure an adequate supply of cars for their own needs. Permission from the railroads to use the cars in lieu of the railroads' own cars was, essentially, guaranteed at that time. However, when traffic declined, and surpluses in equipment developed, many railroads rescinded permits to use private cars in order to maximize per diem revenues from their own hoppers. The carriers have developed pooling arrangements that spread the effect of the car surplus among all hopper car owners. At present, some shippers want automatic access for privately owned equipment and shipper control over their own cars.

After several years of negotiations between shippers and railroads failed to produce an agreement on the proper treatment of private cars, I understand that the ICC has reopened a proceeding to review the rail car access question. I believe it is appropriate for the Commission to take such action, and I am hopeful that this proceeding will result in rules that provide for equitable treatment of shippers and carriers in both surplus and shortage situations.

6. Question: Recently, the Commission proposed rules that would significantly increase the costs of bringing a challenge before the ICC or otherwise challenging railroad actions. For example, the ICC seeks to increase from $500 to $5200 the charge for bringing a complaint alleging unlawful rates or practices of carriers. Do you believe such an increase might erect an economic barrier to the type of redress available to smaller shippers? Philosophically, do you feel that the ICC should provide shippers, both small and large, with a meaningful opportunity to have problems resolved?

Answer: On June 1, 1988, the Commission served its decision in Ex Parte No. 246 (Sub-No. 6), Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services -- 1988 Update. The fees charged by the Commission for handling certain types of filings related to all transportation industries regulated by the ICC are intended to reflect the costs the ICC incurs to handle these filings. I understand that the Commission has indicated that it will consider waiving all or part of the fees in cases where it

would cause undue financial hardship to the applicant or petitioner. Specifically, the ICC's fee waiver standards provide that an applicant must show that the waiver or reduction of the fee is in the best interest of the public, or that the payment of the fee would impose an undue hardship on the requestor.

While I understand the need for the ICC to recover the costs incurred in handling such petitions, I believe the Commission must not erect barriers that would prevent any shipper, small or large, from having the opportunity to have his or her problems reviewed and resolved by the ICC.

7. Question: Competition is a buzzword being used by a number of shippers, particularly agricultural shippers, as a rallying point for legislative modifications to the Staggers Rail Act. Do you believe that the rail industry, particularly those lines in the Western United States, has an effective form of competition for transportation services? If so, what mode of transportation is that competitive alternative? What do you see as the role of the ICC in encouraging a competitive marketplace for shippers?

Answer: As I discussed at my confirmation hearing and in my responses to pre-hearing questions, I believe the Staggers Act gives the ICC adequate authority to resolve competitive issues in keeping with the views of Congress expressed in the Act.

Rail competition in the west is constrained by the limited number of rail competitors, greater geographic distances and length of haul, and the types of commodities carried (e.g., grain and coal shipments). For many shippers, however, trucks provide a viable, indeed pervasive, competitive alternative to railroads. Many agricultural shipments are now handled almost exclusively by trucks (often owner-operators transporting exempt agricultural commodities). Trucks can also be used to ship traffic to other transport modes. For example, trucks can be used to haul grain relatively short distances to competing railroads or to barge carriers. These transportation alternatives increase the range of competitive options available to shippers.

In order to ensure a competitive and financially viable rail system, the Staggers Act granted railroads greater pricing freedom, authorized

contracts, and allowed carriers to streamline their operations. I believe that the Staggers Act has been a success, which is not to deny that the ICC must ensure that rail shippers have the benefits of intramodal and intermodal competition. Thus, the ICC must be cognizant of the level and nature of competition in specific markets when it reviews merger applications and when it reviews the reasonableness of a rail rate.

8. Question: To what extent to you believe consideration should be given to the financial and operating capability of a corporation newly-formed to buy and operate lines of railroad obtained from an existing rail carrier? If you were a member of the Commission, what would be your view as to the financial and operating evidence which should be submitted by such an applicant? What about the applicant's direct or indirect relationship with the seller of the line or lines or with another carrier?

Answer: I have not formulated my views as to what financial and operational data should be submitted by an applicant seeking to buy and operate a rail line from an existing carrier. As a general matter, however, I believe that if a corporation is formed to purchase a rail carrier or a short-line, it should be financially viable in the traditional meaning of the term (adequate financing, sufficient working capital, able to earn profits on its investment over the long term, managerial expertise in the railroad industry). I assume the Commission reviews such applications under these standards. In addition, in the normal course of forming a new enterprise, in order to obtain financing, investors must present a sound plan to the financial community (banks, other lending institutions, and the Securities and Exchange Commission).

The ICC has an obligation to balance the relative merits of seeing a railroad's assets transferred to another enterprise that may be able to continue to provide service against refusing to allow the sale, in which case the rail service may cease.

9. Question: What is your view regarding the extent of the Commission's authority to approve applications for railroad mergers, abandonments and sales? Do you believe that the Commission has authority to approve such acts as shifting of traffic patterns, and the transfer, consolidation or closing of shops, offices

and railroad yards? If so, where do you find the source of this authority? If not, do you believe the ICC should have such authority?

Answer: I have not had the opportunity to review in detail the Commission's authority to approve applications for railroad mergers, abandonments, and sales. From my review of the Interstate Commerce Act, however, I believe the Commission has sufficient authority to ensure that these activities are carried out in a way to further the public interest and enhance competition in the railroad industry. If confirmed, I would work to ensure that the ICC uses its authority to preserve rail competition whenever feasible.

While I find no specific references in the Interstate Commerce Act to the actions stated in this question, the Act appears to provide the Commission fairly broad authority with respect to mergers, abandonments, and sales. For example, section 11344(c) of the Interstate Commerce Act authorizes the Commission to "impose conditions governing the transaction" in consolidation, merger, or acquisition of control cases. In addition, with respect to abandonments, section 10903(b) authorizes the Commission to require compliance with conditions the ICC finds are required by the public convenience and necessity.

10. Question: In your response to a pre-hearing question submitted by the Committee on the ICC's regulation of transportation brokers, you expressed your view that shippers and receivers can recognize which brokers are reputable and which are not. You also noted that the Transportation Brokers Conference of America (TBCA) is taking steps to address the problem of unscrupulous brokers. However, the TBCA represents only 1,400 of the approximately 6,000 licensed transportation brokers in the U.S. In a Surface Transportation Subcommittee hearing on this issue, several witnesses testified that problems exist within the brokerage industry, particularly on the part of intermediaries who may co-mingle funds and delay or fail to pay carriers for services rendered. Is it your belief that the brokerage industry is capable of policing itself in this area?

Answer: In combination with such educational efforts now being undertaken by the TBCA, I continue to believe that shippers and receivers in most situations can recognize which brokers are reputable and which are not. I recognize, however, that a number of problems have been raised about brokers and other transportation intermediaries, particularly with respect to collection of freight bills.

According to testimony presented to the Commerce Committee's Surface Transportation Subcommittee last November by the ICC, the Commission received 610 broker-related complaints in fiscal 1987. While this number does not, I am sure, represent all complaints (since I understand that many carriers do not complain to the Commission), it does not appear to be excessive, given the size of the brokerage industry and the volume of traffic handled by brokers.

As is the case in any type of business, shippers and carriers who work with brokers must exercise sound judgment. To the extent possible, shippers and carriers should investigate a broker's credentials before entering into a business relationship. If a broker fails to live up to his or her contractual or other obligations, the federal and state courts are available to address this situation.

I do not believe that the Commission should institute new regulatory restrictions on brokers. The brokerage industry has flourished under a less regulated, more competitive environment and should be allowed to continue to do so. To address the concern about the financial responsibility of brokers, the Commission may want to explore alternatives to the surety bond licensed brokers currently are required to maintain. As always, the Commission should continue to monitor the brokerage industry and take appropriate action should the need arise.

POSTHEARING QUESTIONS OF SENATOR KERRY AND THE ANSWERS

1. Question: Chairman Gradison has testified in effect before this committee that the financial and operating capability of a corporation newly-formed to buy and operate lines of railroad obtained from an existing rail carrier is "none of the Commission's business"; do you agree with that view? If you were a member of the Commission, what would be your view as to the financial and operating evidence which should be submitted by such an applicant? What about the applicant's direct or indirect relationship with the seller of the line or lines or with another carrier?

Answer: I have not formulated my views as to what financial and operating data should be submitted by an applicant seeking to buy and operate a rail line from an existing carrier. As I general matter, however, I believe that if a corporation is formed to purchase a rail carrier or a short-line, it should be financially viable in the traditional meaning of the term (adequate financing, sufficient working capital, able to earn profits on its investment over the long term, managerial expertise in the railroad industry). I assume the Commission reviews such applications under these standards. In addition, in the normal course of forming a new enterprise, in order to obtain financing, investors must present a sound plan to the financial community (banks, other lending institutions, and the Securities and Exchange Commission).

The ICC has an obligation to balance the relative merits of seeing a railroad's assets transferred to another enterprise that may be able to continue to provide service against refusing to allow the sale, in which case the rail service may cease.

2. Question: There is considerable controversy today regarding the ICC's role in the labor relations of carriers that have received ICC authority to merge or sell lines or lease tracks, etc.; in fact, the ICC has held that its orders and not the Railway Labor Act of the labor contracts control labor relations. What is your view of the ICC's role as a labor relations board; should it be such a board; has it the expertise to govern labor relations?

Answer: As I stated in my responses to pre-hearing questions and at the Commerce Committee's hearing on

my nomination, I believe collective bargaining agreements should be relied upon to the fullest extent possible in rail transactions.

With respect to the question of jurisdiction, it is my understanding that the courts are divided on this issue. In May, the Eighth U.S. Circuit Court of Appeals held in two cases that the Interstate Commerce Act, rather than the Railway Labor Act, takes precedence in rulings involving line sales by railroads to non-rail carriers. Earlier this year, however, the Third U.S. Circuit Court of Appeals took the opposite view.

As the decision by the Eighth Circuit noted, Congress gave the ICC authority to impose labor protective conditions in rail acquisitions, line sales, and abandonments. In these narrow circumstances, the Interstate Commerce Act supersedes the authority of the mandatory bargaining provisions of the Railway Labor Act. To do otherwise would nullify virtually all the ICC's powers on line sales and impede its ability to implement the Staggers Act.

In sum, I tend to agree with the view expressed in the Eighth Circuit's opinion. However, I believe it is essential that the ICC review each case that comes before it in detail, and not adopt a blanket approach on labor protection. Conditions in each situation differ and they should be evaluated on a case-by-case basis. In any case, I do not believe the ICC should attempt to get into areas clearly beyond its Congressional mandate as embodied in the Interstate Commerce Act.

3. Question: In the past years, the ICC has held to the view that in approving applications before it for mergers, abandonments, sales, etc., it was approving only a financial transaction; indeed, as I understand it, the bureau within the Commission with jurisdiction over such applications was called the "Bureau of Finance." Today the Commission appears to take the position that it is approving more than a financial transaction when it approves an application for stock control of one carrier by another; for example, it now claims that it approves each act economically feasible by approval of control or merger -- even though that act may be the opposite of what the applicant had told the Commission it planned to do after consummating its control of the other carrier. What is your view regarding the extent of the Commission's approval authority? Does the

Commission have authority to approve such acts as shifting of traffic patterns, and the transfer, consolidation or closing of shops, offices, and railroad yards?

a. If not [so], from where in the Act does this authority flow? _____

b. Do you believe the ICC should have such authority?

Answer: I have not had the opportunity to review in detail the Commission's authority to approve applications for railroad mergers, abandonments, and sales. From my review of the Interstate Commerce Act, however, I believe the Commission has sufficient authority to ensure that these activities are carried out in a way to further the public interest and enhance competition in the railroad industry. If confirmed, I would work to ensure that the ICC uses its authority to preserve rail competition whenever feasible.

While I find no specific references in the Interstate Commerce Act to the actions stated in this question, the Act appears to provide the Commission with fairly broad authority with respect to mergers, abandonments, and sales. For example, section 11344(c) of the Interstate Commerce Act authorizes the Commission to "impose conditions governing the transaction" in consolidation, merger, or acquisition of control cases. In addition, with respect to abandonments, section 10903(b) authorizes the Commission to require compliance with conditions the ICC finds are required by the public convenience and necessity.

4. Question: I have recently been contacted by the Massachusetts Secretary of Transportation about serious concerns in the Commonwealth with the potential negative impact on rail service of the ICC methods of determining opportunity costs in abandonment cases, and "reasonably expected costs" in light density surcharge situations. According to the Transportation Secretary, calculations of opportunity costs are premised on the assumption that, if abandoned, railroad real estate assets will be developed for maximum profit, absent any other considerations. Such an approach leads to a much higher calculation of opportunity costs than if the railroad's actual "net investment" is considered. This situation created huge incentives for railroads

to cannibalize the transportation infrastructure in regions, at great cost to communities, the public, and the economy. Can you comment for me on how you think the ICC should be approaching these issues? Do you believe that the ICC is compelled to allow "opportunity costs" based on fair market value? If so, are you troubled by the transportation policy implications of this trend? What do you recommend for the future?

Answer: I am aware that the Commission has instituted a rulemaking proceeding in Ex Parte No. 402 to consider proposed revisions to the ICC's regulations governing the computation of reasonably expected costs in connection with light-density line surcharges. Similarly, the ICC has instituted a rulemaking proceeding in Ex Parte No. 274 (Sub-No. 11A) to consider proposed revisions to the ICC's regulations governing applications to abandon or discontinue rail service and offers of financial assistance. In both instances, the modifications are intended to reflect recent findings of the Railroad Accounting Principles Board, which was created by the Staggers Act to develop principles to govern the measurement of economically accurate costs. As these cases are pending before the Commission, I do not believe it would be appropriate for me to comment further on these issues. I can assure you, however, that if confirmed, I will review the record from these rulemaking proceedings with a view toward ensuring that the cost standards/definitions adopted by the ICC reflect the goals embodied in the Staggers Act.

I have not reviewed the cases or proceedings in which the Commission has used the concept of "opportunity cost." However, in the economic literature, "Opportunity cost is the evaluation placed on the most highly valued of the rejected alternatives or opportunities. It is that value that is given up or sacrificed in order to secure the higher value that selection of the chosen object embodies." (James M. Buchanan, "Opportunity Cost," The New Palgrave Dictionary of Economics, 1987, vol. 3, p. 719.)

I would have to review the ICC's decisions to determine whether the Commission is using the concept of opportunity cost correctly. Also, of course, the ICC is required to consider a range of issues in reaching its decisions. Therefore, I cannot state whether or how important the concept of opportunity cost would be in my decision-making process if I am confirmed.

POSTHEARING QUESTIONS OF SENATOR BREAUX AND THE ANSWERS

1. Question: One of the complaints often made about the ICC is that it has deregulated phases of its jurisdiction without prior authority of Congress. With regard to the motor carrier field, do you believe that there are circumstances in which the ICC is legally justified in deregulating on its own?

   a. Would these circumstances be confined to proper exercise of the exemption power in 49 U.S.C. 11343(e)? Is not that provision restricted to merger, consolidation, and acquisition of control transactions?

   b. If there are other circumstances that would justify deregulation without prior authority from Congress, please identify them.

   Answer: Section 3 of the Motor Carrier Act included two relevant Congressional findings:

   (1) "the Interstate Commerce Commission should be given explicit direction for regulation of the motor carrier industry and well-defined parameters within which it may act pursuant to congressional policy;" and

   (2) "the Interstate Commerce Commission should not attempt to go beyond the powers vested in it by the Interstate Commerce Act and other legislation enacted by Congress."

   I believe the Motor Carrier Act of 1980 makes it quite clear that Congress did not intend for the Commission to undertake to deregulate the motor carrier industry outside the scope of this Act without prior approval from Congress. The Act directs the Commission to promote "competitive and efficient transportation services," and I believe the ICC should make every effort to promote competition in the trucking industry within the parameters of the 1980 Act.

   With respect to section 11343(e) of title 49, United States Code, which provides the Commission exemption authority under certain circumstances, I read that section to apply only to merger, consolidation, and acquisition of control transactions.

2. Question: Since enactment of the Motor Carrier Act of 1980 the trucking industry has experienced some severe financial problems, such as bankruptcies and price wars. During this period, it has been alleged that the Commission has not concerned itself with the financial health of motor carriers. Do you feel that financial stability in the industry is a legitimate concern of the Commission, and if so, what role should the Commission play in this regard?

Answer: The National Transportation Policy in the Interstate Commerce Act, as amended by the Motor Carrier Act, requires the Commission to seek to promote "competitive and efficient transportation services" in order to, among other things:

(1) "enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;" and

(2) "improve and maintain a sound, safe, and competitive privately-owned motor carrier system."

I believe the Commission has the responsibility to consider the financial stability of the trucking industry in its regulatory activities. Given the Commission's current trucking regulatory responsibilities, this would be most relevant with respect to rate changes sought by carriers and in reviewing merger and acquisition applications between carriers. The ICC should seek to create an environment that permits trucking companies to be financially sound, competitive, and able to provide adequate service to the shipping public. The Commission should not become involved in the operations of specific carriers. Rather, the Commission should be diligent in obtaining and reviewing information on the financial health of the trucking industry to ensure that the industry, in aggregate, is financially sound.

POSTHEARING QUESTIONS OF SENATOR DANFORTH AND THE ANSWERS

1. Question: What is your view of a trucking firm's common carrier obligation and the Interstate Commerce Commission's role in supervising that obligation?

Answer: Section 11101 of the Interstate Commerce Act requires a common carrier subject to ICC jurisdiction to provide the transportation or service "on reasonable request." Motor common carriers are required to provide "safe and adequate service, equipment, and facilities." Section 11101 also gives the ICC authority to prescribe requirements for continuous and adequate transportation service provided by motor common carriers under its jurisdiction. Historically, common carriers have been given considerable discretion by the Commission as to the quantity and quality of services they provide.

Prior to enactment of the Motor Carrier Act of 1980, the common carrier obligation was not effective in ensuring that service was provided. Common carriers provided service if it was profitable to do so. When a carrier decided against continuing to serve a particular route or community, it simply stopped serving that market. Given the ICC's lack of resources and the limited knowledge of administrative complaint procedures by much of the shipping public, the ICC was not able to enforce the common carrier obligation effectively.

I believe it is generally preferable to have the marketplace, rather than the ICC, determine whether and when a motor carrier provides service. In fact, given the broad operating authorities held by many carriers, it would not only be impossible to enforce the common carrier obligation strictly, but it might also lead to a misallocation of trucking resources, especially when there is insufficient traffic to justify continued service.

There may be cases, however, where carriers seek to discontinue providing service authorized by their certificates -- either in terms of regions served or commodities carried. If the shippers affected by the carrier's actions have no reasonable transportation alternative available, I believe they should be able to bring this matter to the Commission and obtain careful ICC review and possible action. The ICC has a responsibility to ensure that shippers have reasonable transportation service available to them.

POSTHEARING QUESTIONS OF SENATOR PRESSLER AND THE ANSWERS

1. Question: In many cases, shortline railroads are at the mercy of Class I railroads when it comes to reciprocal switching agreements. My research has shown those reciprocal switching charges range from $75 to $500 per car. Obviously, that kind of spread can increase the cost of grain. What will you as a member of the ICC do to ensure that these charges are fair and equitable?

   Answer: Given the importance of shortline and regional railroads, I believe the ICC must be vigilant in ensuring that small carriers are treated fairly by the large carriers. If confirmed, I would seek to ensure that any allegations of abuse by the Class I railroads were investigated by the Commission and appropriate action taken.

2. Question: Recent reports show that the dry weather much of the nation is experiencing will lead to a reduced U.S. harvest this year and ultimately higher grain prices. As you know, higher grain prices can put a serious strain on the grain transportation system. What can the ICC do to prevent a serious shortage of railcars should the demand for grain transportation increase?

   Answer: There are two issues associated with the problem of grain car shortages:

   (1) the size of the current fleet of covered hoppers; and

   (2) how railroads should handle privately owned equipment.

   I understand that the recent shortage of covered rail hopper cars was most pronounced between November 1987 and April 1988, largely due to two U.S. Department of Agriculture programs -- the Export Enhancement Program, and a special program for exchanging certificates for wheat -- that led to a large surge of exports. As a result, grain cars unloaded at ports during the first quarter of 1988 were up more than 75% over the same period in 1987. Railroads bore the brunt of the increased demand, because the Great Lakes and the Upper Mississippi were closed to navigation during the winter months. As soon as these waterways reopened, the pressure on the railroads declined. Thus, it appears that there

is no need to increase the size of the national fleet of covered hoppers unless record levels of grain traffic continue.

With respect to privately owned equipment, I understand that many shippers bought their own cars in the 1970s and early 1980s as grain exports surged in order to ensure an adequate supply of cars for their own needs. Permission from the railroads to use the cars in lieu of the railroads' own cars was, essentially, guaranteed at that time. However, when traffic declined, and surpluses in equipment developed, many railroads rescinded permits to use private cars in order to maximize per diem revenues from their own hoppers. The carriers have developed pooling arrangements that spread the effect of the car surplus among all hopper car owners. At present, some shippers want automatic access for privately owned equipment and shipper control over their own cars.

After several years of negotiations between shippers and railroads failed to produce an agreement on the proper treatment of private cars, I understand that the ICC has reopened a proceeding to review the rail car access question. I believe it is appropriate for the Commission to take such action and I am hopeful that this proceeding will result in rules that provide for equitable treatment of shippers and carriers in both surplus and shortage situations.

3. Question: I understand you are unable to comment specifically on a case currently before the Interstate Commerce Commission. However, I would like you to address a general topic area.

Certain companies who have been granted authority to furnish transportation to the public as common carriers, and who have the capacity and capability to do so, have attempted, selectively and unilaterally, to refuse to transport certain goods even though they have transported those goods for years and even though they have realized a healthy profit from doing so.

a. In interpreting and implementing the legislative intent of the Motor Carrier Act, will you actively seek to ensure that carriers meet their common carrier obligations under the Act?

Answer: Section 11101 of the Interstate Commerce Act requires a common carrier subject to ICC jurisdiction to provide the transportation or service "on reasonable request." Motor common carriers are required to provide "safe and adequate service, equipment, and facilities." Section 11101 also gives the ICC authority to prescribe requirements for continuous and adequate transportation service provided by motor common carriers under its jurisdiction. Historically, common carriers have been given considerable discretion as to the quantity and quality of service offered and provided.

I believe it is generally preferable to have the marketplace, rather than the ICC, determine whether and when a motor carrier provides service given the overall level of competition in the trucking industry. In fact, given the broad operating authorities held by many carriers, it would not only be impossible to enforce the common carrier obligation strictly, but it might also lead to a misallocation of trucking resources, especially where there is insufficient traffic to justify continued service.

There may be cases, however, where carriers seek to discontinue providing service authorized by their certificates -- either in terms of regions served or commodities carried. If the shippers affected by the carrier's actions have no reasonable transportation alternative available, I believe they should be able to bring this matter to the Commission and obtain careful review and possible action. The ICC has a responsibility to ensure that shippers have reasonable transportation service available to them. If confirmed, I will seek to ensure that carriers meet their common carrier obligations in such cases.

b. Should shippers who have long relied upon a particular carrier to transport their goods be able to look to the Commission to require that carrier to continue to provide service where there has been no showing that the service has been unprofitable?

Answer: Again, I believe it is generally preferable to have the marketplace, rather than the ICC, determine whether and when a motor carrier provides service. If, however, shippers have long relied upon a carrier to transport their goods and there is no other transportation alternative available to them, the Commission may then be forced to require a carrier to continue to provide the service, especially if that service has not been unprofitable.

CHARLES E. COBB, JR., TO BE UNDER SECRETARY OF COMMERCE FOR TRAVEL AND TOURISM, DEPARTMENT OF COMMERCE AND WENDY MONSON DeMOCKER, TO BE ASSISTANT SECRETARY OF TRANSPORTATION FOR PUBLIC AFFAIRS, DEPARTMENT OF TRANSPORTATION

TUESDAY, JUNE 14, 1988

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION,
Washington, DC.

The committee met at 9:40 a.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller, IV, presiding.

Staff members assigned to this hearing: David St. John; Becky Kojm, professional staff members; and Ruth Johnson, minority professional staff member.

Senator ROCKEFELLER. My apologies to all, particularly my colleague in the Senate, Bob Graham, who will now present Mr. Cobb, after which I would also like to make a statement.

Senator, you may proceed.

STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM FLORIDA

Senator GRAHAM. This is a genuine pleasure. Chuck Cobb has been a personal friend of mine for over ten years. He has been one of the most contributing civic members of our state.

He has made a great contribution in every area in which he has been called upon to serve and has been an initiator of many important public projects for Florida. While doing all of that, he has been an extremely successful member of our business community and has helped to shape the modern Florida.

For that reason, I believe he is uniquely prepared to be the representative of the United States government in our efforts to enhance our trading position around the world. He understands the world. He is comfortable in a dynamic environment.

He is an effective sales person for whatever enterprise is fortunate enough to have him as its representative. And now that enterprise is the United States of America.

Mr. Chairman, I am very pleased to have this opportunity to thank the President of the United States for allowing all Ameri-

cans to have at their service Chuck Cobb, to thank Mr. Cobb for his willingness to give this additional public service, and to urge an expedited and very strong confirmation by the United States Senate of this excellent appointment.

Senator ROCKEFELLER. Everything that you have said, Senator, sounds to me like right on target. I was worried about your opening sentence, when you said that he was a very good friend of yours, which calls into question I think of some of the more sober members of this committee Mr. Cobb's judgment.

Senator GRAHAM. Well, since that excludes the members of the committee who are currently present, we will allow them to arrive at their own conclusions.

Senator ROCKEFELLER. Senator Graham, we are very, very grateful to you. And again, I appreciate your being here. I do not want to hold you.

Senator GRAHAM. I want to listen to what Mr. Cobb has to say.

Senator ROCKEFELLER. You have to listen to me first. That is the problem.

Senator GRAHAM. Then I will reconsider.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. We are obviously, Senator Pressler, hearing from the Administration's nominee to be Under Secretary of Commerce for Travel and Tourism, and that gentleman is Mr. Charles E. Cobb, Jr.

Immediately following this hearing, the committee will proceed to the nomination of Wendy DeMocker, who is also in the audience, to be Assistant Secretary of Transportation for Public Affairs.

Mr. Cobb has been nominated to replace Donna Tuttle, who received a very well-deserved promotion to post of Deputy Secretary of Commerce.

Mr. Cobb, I have the greatest deal of respect for Donna Tuttle. I found her to be a tremendous person to work with. I think she did a tremendous job. And so you can understand that from my point of view the shoes that you will be filling will be very big ones. And I am confident that you will do that.

We have seven months remaining in the current Administration, but these are very important months for USTTA in my judgment. They are a very crucial seven months. With the fall of the dollar, the United States has become one of the world's best travel bargains. We are sitting on a gold mine—an enormous opportunity to grab a major share of a very lucrative worldwide travel market if we are prepared and willing to do so.

But the weakness of the dollar has also increased the cost of advertising in foreign markets, and particularly USTTA's cost of maintaining its very important overseas operations.

Fundamentally, the agency has been level-funded over the past few years. The drop in the dollar has actually meant that USTTA has had to considerably reduce its marketing activities.

Thus, the post of Under Secretary of Commerce for Travel and Tourism represents a twofold challenge for you, sir, in my judgment. First, you will need a great deal of creativity and imagina-

tion in order to get the very best from a relatively few number of dollars.

And second, you will need to have the leadership qualities necessary to forge a consensus between industry and government regarding the future of USTTA. We simply must find some way to get this agency the funding that it needs to carry out its mission.

Eleven or $12 million a year is nowhere near the level that is needed. I think we could be twice that and still be short.

I happen to think, Mr. Cobb—having reviewed the record about you and what has been written about you and having listened to Senator Graham—that you are precisely the right man for this job.

You have had a long and successful association with the former Arvida Corporation, a resort developer which now is wholly owned as a subsidiary of the Walt Disney Company. Your list of associations in terms of major enterprises is extraordinary, truly extraordinary. The only one that you have not gotten to yet is to Rockresorts, and I assume that will be somewhere in your future.

In addition, you have, as Senator Graham pointed out, been working on the matter of trade. Trade development experience will be an important tool for you in my judgment in your new job at USTTA. Our tourism industry is big, it is growing. It has a tremendous amount of potential for further development.

I think you have the experience. I believe you have the leadership, and I know that you can play a major role in the determination of this industry's future, particularly with respect to the Federal government's role in the promotion of international travel.

So I am delighted that you are here. I am solidly in your corner even before you give your opening statement. Senator Pressler, do you have an opening statement?

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Yes, I do.

I welcome the witness. I welcome my colleague to this committee. Let me say I am very interested in this nomination and in this subject matter. In my state, our second largest industry is the tourism industry. We receive over two million tourists a year and it provides a lot of employment.

It was my honor to sponsor the bill that created this particular job some years ago. It passed the House and Senate and was signed by the President to create an Under Secretary of Commerce for Travel and Tourism.

Our thinking at that time was to upgrade tourism, not to spend any more money, but to upgrade it, to find ways to promote tourism and to work with the states and the private industries. And I think that that has been successful.

There are some areas I am still working on with Senators and other people that I hope you will be interested in and I would be curious to hear your reaction. One is that I have long been trying to get our embassies more involved in promoting tourism and destination points in the United States.

Our embassies have foreign agricultural specialists to promote agricultural sales. We have Commerce Committee people to promote sales abroad. But every time a foreign tourist comes to the

87-059 O - 88 - 4

United States that is a sale, because we are helping to balance our payments and so forth.

Also, I have strongly urged that we use our international computer system, the WIC system, in the embassies to describe points of destination in the different states. There would be a limit on this. Perhaps each state could have so many according to population or whatever. Just a plain description of points of destination, something that is sometimes not available.

It would be a way of disseminating hard information that could be available to the public in some countries through consulates and so forth. I do not think we are doing that.

I have also urged that there be a program for foreign service officers during their training period on promoting tourism, and that that be given a higher priority, so that the Commerce Department could work with the State Department in that area.

We had a hearing a number of years ago in which we had Herman Kahn, the futurist who is now deceased, testify on his vision of tourism in the United States. He felt that by the year 2000 tourism could be our largest industry, rightly or wrongly, because part of a liberal arts education around the world has become a visit to the United States, just as the so-called grand tour of Europe was in earlier decades.

The point is we are at a point in our history when we are going to have to work harder for foreign exchange.

Another thing I am always interested in is I do not like to see these tourists just come to the East Coast and the West Coast. I would like to hear the nominee's views on what he is going to do to urge them to get to the middle of the United States and see the whole country. So I will be listening closely to his approaches on that.

I might compliment you, Mr. Chairman. I had the honor of chairing this subcommittee in the good old days, so to speak. But I am very happy to be here in support of you and in support of the nominee, and look forward to hearing his statements.

Senator ROCKEFELLER. Thank you very much, Senator.

Senator Trible is the ranking member of this subcommittee. And Senator Trible, we would be delighted if you have some comments you would like to make.

OPENING STATEMENT BY SENATOR TRIBLE

Senator TRIBLE. To clarify the record, I am sure that by referring to the good old days my colleague, Senator Pressler, was not referring to the time before you arrived in the Senate, but rather the time that the Republicans controlled the place.

And we are pleased by one event and disappointed by the other. But you are a good chairman and I have enjoyed working with you this year.

I am sorry that I have come a few minutes after the hearing began. I was speaking on the floor of the Senate.

I have just one question to ask at the appropriate time. Has Mr. Cobb had a chance to do his opening statement?

Senator ROCKEFELLER. He has not given his statement at this point, no.

Senator TRIBLE. I will desist and look forward to hearing his statement then.

Senator ROCKEFELLER. I have an opening statement from the Chairman of the Committee, Senator Hollings, that I will include in the record along with your biographical sketch.

[The statement and biographical sketch follow:]

OPENING STATEMENT BY THE CHAIRMAN

Mr. Chairman, with only a little more than a year remaining in the current administration, I fear that some people might think this Committee is taking its advice and consent role less seriously. But that is not the case.

We have before us Charles E. Cobb, Jr., President Reagan's nominee to be Under Secretary of Commerce for Travel and Tourism. Mr. Cobb has an impressive resume as a resort developer and trade development official. He appears to have the right qualifications for running the United States Travel and Tourism Administration (USTTA) and helping accomplish the agency's mission of promoting the U.S. as an international travel destination.

Anyone familiar with the dynamics of international tourism knows that the policies Mr. Cobb pursues over the next seven months could have a major impact on the U.S. effort to improve its posture in the world tourist trade.

The fall of the dollar has brought tremendous opportunities for America's growing travel industry. It's a seller's market out there. And the role of USTTA as the leader of America's international marketing effort has never been more crucial than now.

USTTA should be funded at a much higher level than the $11 million or $12 million the agency currently receives. The administration and the Congress must be made to understand that this is taxpayer money well spent—USTTA's marketing programs bring in many times the agency's budget in foreign currency.

If confirmed, however, Mr. Cobb probably won't have much more money to work with than his predecessor. So his challenge will be to keep USTTA in the best shape possible until we can get a new administration in here that recognizes that value of promoting the U.S. as an international travel destination. I look forward to hearing his ideas on how he will accomplish this. And I wish him the best of luck.

ERNEST F HOLLINGS SOUTH CAROLINA CHAIRMAN
DANIEL K INOUYE HAWAII
WENDELL H FORD KENTUCKY
DONALD W RIEGLE JR MICHIGAN
J JAMES EXON NEBRASKA
ALBERT GORE JR TENNESSEE
JOHN D ROCKEFELLER IV WEST VIRGINIA
LLOYD BENTSEN TEXAS
JOHN F KERRY MASSACHUSETTS
JOHN B BREAUX LOUISIANA
BROCK ADAMS WASHINGTON
JOHN C DANFORTH MISSOURI
BOB PACKWOOD OREGON
NANCY LANDON KASSEBAUM KANSAS
LARRY PRESSLER SOUTH DAKOTA
TED STEVENS ALASKA
BOB KASTEN WISCONSIN
PAUL S TRIBLE JR VIRGINIA
PETE WILSON CALIFORNIA
JOHN MCCAIN ARIZONA
RALPH B EVERETT CHIEF COUNSEL AND STAFF DIRECTOR
W ALLEN MOORE MINORITY CHIEF OF STAFF

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: COBB (Last) CHARLES (First) ELVAN (JR.) (Other)

Address: 3030 K Street, Suite 305 (Current residence)
Washington, D.C. 20007

14th & Constitution Avenue, N.W. (Business)
Washington, D.C. 20230

2. Position to which nominated: Under Secretary of Commerce Travel and Tourism

Date of nomination: May 9, 1988

3. Date of birth: May (month) 9 (day) 1936 (year)

Place of birth: Fresno, California

4. Mantal status: Married

Full name of Spouse: Sue McCourt Cobb

5. Names and ages of children: Christian McCourt Cobb — 25 yrs. - Born March 12, 1963
Tobin Templeton Cobb — 23 yrs. - Born July 6, 1964

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Stanford University	1960-62	M.B.A.	June 1962
Stanford University	1954-58	B.A.	June 1958
Fresno High School	1950-54	High School Diploma	June 1954

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
		SEE ATTACHMENT I		

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

SEE ATTACHMENT II

9. Political affiliations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last 10 years.

Republican Committees at national, State of Florida, and county levels

Republican Eagles

Republican Senatorial Committee Inner Circle

Co-chairman of Florida Finance Committee, George Bush for President

During my 1987 confirmation hearing before the United States Senate Committee on Banking, Housing, and Urban Affairs, I provided the political contributions shown on Attachment #2. Since that time I have made contributions of $10,000. to the Republican Eagles, $1,000. to the Republican Senatorial Committee, $5,000. to the Florida Victory Committee, $200. to the Committee to Elect Blair Sibley, $1,000. to Senator David Karnes for U.S. Senate, $1,000. to Connie Mack for U.S. Senate and $338. to Clay Shaw for his re-election to Congress.

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

SEE ATTACHMENT III

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

SEE ATTACHMENT IV

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials you have written.

No published material

Attachment I

7. Employment record

From	To	Name of Employer	Address	Type of Work
1987	1988	U.S. Department of Commerce	14th & Constitution Ave.,NW Washington, D.C. 20230	Assistant Secretary for Trade Development
1984	1987	Arvida Disney Corporation	4700 SE Financial Center Miami, FL 33131	Chairman and Chief Executive Officer and Member of Walt Disney Company Board of Director and Executive Committee
1982	1984	Penn Central Corporation	500 West Putnam Avenue Greenwich, CT 06836	Senior Executive Vice President, Member of Board of Directors and Chief Operating Officer
1980	1982	Penn Central Corporation	500 West Putnam Avenue Greenwich, CT 06836	Group President of Penn Central (group includes Arvida, Six Flags, Great Southwest)
1972	1980	Arvida Corporation	One Biscayne Tower Miami, FL 33131	President and Chief Executive Officer
1964	1972	Kaiser Aluminum and Chemical Corporation	Oakland, CA	Group Executive (responsible for several subsidiaries)
1962	1964	Dodge & Cox	One Post Street San Francisco, CA	Investment Research Analyst
1958	1960	U.S. Navy LT (JG)		

ATTACHMENT II

8. Government Experience

1986-1987	Assistant Secretary for Trade Development, U.S. Department of Commerce
1986-1987	Member and Chairman, Florida's Columbus Hemispheric Trade Commission
1987	Member, Florida's Sales Tax Exemption Study Commission
1978-1982	Member and Chairman (elect), Florida Department of Commerce Economic Development Advisory Council
1974-1982	Accompanied governors on six economic development missions to Europe, South America and various U.S. cities
1974-1978	Represented Florida as a member of the Southern Growth Policies Board
1976	Represented Governor of Florida at the White House Conference on Balanced Growth and Economic Development
1978	Member, Governor's Economic Policy Task Force

ATTACHMENT #2

Political contributions:

1987:	Fund for America's Future	$ 5,000
	Vice President's Exploration Account	1,000
1986:	Florida Republican Victory Committee	5,000
	Republican National Committee (EAGLES)	10,000
	Claude Pepper	500
	Orrin Hatch	500
	Bob Martinez for Governor	2,000
	Republican Party of Dade County	1,000
	Fund for America's Future	5,000
	Judge Leah Simms	500
1985:	Friends for Bob Graham	2,000
	Re-Elect Paula Hawkins	2,000
	Republican Senatorial Inner Circle	1,000
	Walt Disney Company PAC	1,000
	Fund for America's Future	5,000
1984:	Reagan-Bush Republican Party of Dade County	1,000
1983:	Askew for President	1,000
	Penn Central PAC	500
1982:	Terry Miller for Governor (Alaska)	500
1980:	Democratic Party of Florida	500
	Reagan for President (FL Victory Committee)	1,000

Attachment III

10. Memberships

Organization	Office Held	Dates
University of Miami	Trustee, Vice Chairman of Board, Chairman of Executive Committee, Finance Committee, Long Range Planning Committee and other committees	1973-Present
Stanford University	Trustee of Business Trust Fund, Advisory Council of Business School, President of two alumni associations	1965-Present
Plymouth Congregational Church	Board of Trustees, Chairman of Long Range Planning Committee	1975-1986
Florida Chamber of Commerce	Board of Directors and Executive Committee	1973-1987
Greater Miami Chamber of Commerce	Board of Directors, Executive Committee, Chairman of Greater Miami Inc.	1973-1982
Florida Council of 100	Board of Directors, Executive Committee, Chairman of Industry and Commerce Committee	1975-Present
South Florida Coordinating Council	Chairman, President, Board of Directors, Executive Committee	1975-1987
Orange Bowl Committee	Member	1979-Present
Young Presidents Organization	Member	1970-1986
Urban Land Institute	Trustee, Board of Governors, Council Member	1978-Present
Lincoln Land Institute of Land Policy	Trustee	1979-1987
Florida Citizens for Better Transportation	President	1980-1983

ATTACHMENT III, (page 2)

Organization	Office Held	Dates
Southeast Banking Corporation, Southeast Bank and Southeast First National Bank of Miami	Board of Directors, Chairman of Credit and Loan Committee	1977-1987
Bankers Life (Nebraska)	Trustee	1979-1986
CLC of America	Board of Directors	1976-1980
Florida Sales Tax Exemption Commission	Chairman	1987
Florida Columbus Hemispheric Trade Commission	Chairman	1987
Chief Executive Organization	Member	1986-Present
The Beacon Council	Member	1986-1987
Penn Central Corporation	Director and Officer	1982-1984
Lincoln Foundation	Member	1982-1987

ATTACHMENT III (Page 3)

Name in Full	Address	From	To	Office Held
The Board Room	280 Park Avenue New York, New York 10017	1982	Present	Member
City Club of Miami	Southeast Financial Center Suite 2600 Miami, FL 33131	1983	Present	Member
Grove Isle Club	4 Grove Isle Drive Miami, Florida 33133	1980	Present	Member
Royal Palm Tennis Club	7001 S.W. 98th Street Miami, Florida 33156	1972	Present	Member
The Olympic Club	524 Post Street San Francisco, CA 94102	1957	Present	Member
Indian Creek Country Club	Indian Creek Village Miami, Florida 33154	1980	Present	Member
Cat Cay, Ltd.	Cat Cay Bahamas P.O. Box 530950 Miami Shores, FL 33153	1988	Present	Member
Ocean Reef Club	Key Largo, FL 33037	1976	Present	Member
Phi Delta Theta Fraternity	Stanford University Stanford, CA 94305-5015	1954	1958	President

ATTACHMENT IV

11. Honors and Awards

Admitted to the Junior Achievement Hall of Fame (1987)
Selected by the Royal Palm Foundation as one of the South Florida's Achievers of the Decade (1987)
Selected by Harvard Business School Club of South Florida as Business Statesman of the Year (1986)
National Conference of Christians and Jews Silver Medallion Award for Protestants by the Florida Chapter (1981)
Voted Business Leader of the Year for Greater Miami in an election sponsored by the Miami News (1978)
Man of the Year by the Real Estate Sales Directors in Florida (1978)
Selected as one of the three top chief executive officers in the nation in the hotel and real estate industry by Financial World (1975)
Member of U.S. Olympic Team as an alternate in the 110m high hurdles (1960)
Recipient of Floyd L. McElroy Scholarship at Stanford Business School (1960-62)

Senator ROCKEFELLER. We would be delighted to hear from you, sir.

STATEMENT OF CHARLES E. COBB, JR.

Mr. COBB. Thank you, Mr. Chairman and members of the committee. Thank you, Senator Graham, for that very nice introduction.

I have submitted, Mr. Chairman, a brief comment, so I will not repeat all of the points because I think you were very generous in your comments and made some of those points better than I have made them in my statement. So I will not try to repeat those.

I guess the key point that I would like to make is that I think my background as the Assistant Secretary for Trade Development and my business background that you talked about with the several different resort companies, from Disney to Arvida to Six Flags to others, will be very helpful to me.

I might mention to you, Mr. Chairman, I did talk to Laurence Rockefeller about Rockresorts, but was unable to make a satisfactory arrangement with them. But that is a great company and one that I wanted to be associated with in our portfolio, but was unable to do that.

I think the travel and tourism industry has much more potential. And I know you agree with this, Senator, but others do not. And it is an industry with $300 billion in this country in terms of revenues. It employs six million people.

And it is going through some of the same dynamics that so many other of our businesses are going through, and that is international competition.

And Senator Pressler, I might indicate that the Herman Kahn projection really has already happened. It now is the largest indus-

try in the world. It is a $2 trillion worldwide industry, the largest in the world.

And while we as a country are competing fairly well in this industry and the $20 billion of inflow we have from foreign tourists is the largest in the world, unfortunately Americans spend $30 billion in foreign countries. So we do have this $10 billion deficit.

I think we can make a dent in that deficit. And although we only have seven months left in this Administration, I would like to have the opportunity to lead the U.S. effort in making a dent in that deficit. I am hopeful that my background, my commitment, and my energy, will enable me to do that.

Would you like, Mr. Chairman, for me to answer some of Senator Pressler's questions now or do that later? How would you like me to do that?

[The statement follows:]

STATEMENT OF CHARLES COBB

Mr. Chairman and Members of the Committee, my name is Charles Cobb. I am presently the Assistant Secretary of Trade Development at the Department of Commerce and recently have been named the Acting Under Secretary for Travel and Tourism.

The travel and tourism industry is an important industry in the U.S. with significant growth potential. Domestic and international travellers spend over $300 billion per year in the United States, which has created almost 6 million jobs.

The United States travel and tourism industry is experiencing dynamics similar to those of other industries in the United States that produce and sell merchandise, particularly severe international competition. The $300 billion U.S. travel and tourism market is just a portion of the $2 trillion world travel and tourism market.

The U.S. is competing well, but we can do better. Foreign travellers and tourists spent approximately $19.5 billion last year on United States goods and services while visiting the United States. This almost $20 billion figure is the largest in the world. Unfortunately, United States citizens spend almost $30 billion in other countries and, therefore, as a nation we have approximately a $10 billion deficit in our balance of trade in travel and tourism payments.

I look forward to the opportunity to provide leadership to the United States effort in improving this trade deficit. In my judgment, both my business career and my tenure as Assistant Secretary for Trade Development will provide me with the background and tools to provide this leadership. Prior to joining the Government, I was the Chief Executive Officer of all of The Walt Disney Company's real estate companies and also a member of Disney Board of Directors and its six person Executive Committee. Prior to my Disney affiliation, I was the Chief Operating Officer of Penn Central. Prior to becoming the Chief Operating Officer of Penn Central, I was a Group President of Penn Central in charge of its real estate, hotels, resorts, and amusement park companies. These companies included Six Flags, (the second largest amusement company in the United States to The Walt Disney Company), and Arvida Corporation, which owned hotels and resorts in Florida, Georgia and California, including The Boca Raton Hotel and Club, and the Sawgrass, Longboat Key Club, and Cota de Caza resorts.

I will only have about seven months of leadership tenue, if I am confirmed by the Senate. However, I believe I have the commitment, background and energy to make a difference in this short period of time.

I look forward to answering any questions that the Senators of the Committee might have.

Senator ROCKEFELLER. If you have completed your statement, I would be glad to have Senator Pressler or Senator Trible ask questions. And I have some which I would like to ask also.

Mr. COBB. Senator Pressler has listed four questions and I am prepared to answer them if you would like me to now.

As I have submitted in my answers to the five questions that have been submitted in the prehearing process, I have emphasized

the one key thing that I think that we have done well in the past and that is to have a partnership with private industry, a cooperative effort. I see USTTA's role as the catalyst in that cooperative effort.

I think we have done it well on our advertising programs. We have done it well on the regional conferences that we have set up. We have set up nine regional conferences throughout the country that addresses Senator Pressler's last point: What are we doing in mid-America and other parts of the country.

Through these regional conferences, (as we are about to do in Virginia and as we did in South Dakota and in West Virginia), we have been able to articulate to the small travel agents—(there are a million travel agent businesses throughout this country)—how they might tap the international markets, how they can work with their states, and how they can work with our international offices to be more effective in the international market. We have put together tours for different parts of the country, and some of those tours have been quite successful. And we hope to emphasize these new tours and continue these regional partnerships.

Now, at the same time we hope to have cooperative sales and information offices in some of our different cities. London is the one we want to start with. We do not now have any cooperative information offices but with London, we think we have a city that has a lot of potential with working with private industry. And that is one of the priorities I want to give during the next seven months.

And at the same time we do that, we will try to get our operational offices in the embassies, to pick up on Senator Pressler's suggestion. We have now successfully done that in Paris during the last month. We have negotiated an arrangement whereby we are going to move our office into the embassy in Paris.

I had hoped to be able to do that in London and I met with the ambassador last week. There is just not room in the London embassy to move in. But they have given us the spare space that they have for one office, and so one of our people will be in that office every day in the embassy, in addition to our office outside the embassy.

But one of the things I would like to see us do is to get (as great an extent possible) our offices into the embassies.

You talked about our information systems. I agree with Sen. Pressler that we have to do a better job in disseminating information. We are disseminating information the way we did it 10, 15 years ago, which is not very efficient. Whether it is the embassy computer system or not, I am not sure.

I think some of the airlines have now come up with more effective information systems. Another possibility is AT&T which is working on an information system. So we see doing this with private industry as being a more effective way to have a national data bank on travel and tourism opportunities. A bank that will be up to date and that will be of use to our international visitors. That is going to be a high priority.

I think I have answered all of your questions, Senator Pressler. Did I, Senator? Did I answer all those questions?

Senator PRESSLER. Yes, and I would appreciate anything further that you can follow up on regarding the international aspects and

moving tours around the country, for example what facilities we need to develop and how you can work with the states in terms of international tourists.

Mr. COBB. Those international conferences are consistent with Secretary Verity's focus on Export Now (we are calling these conferences "Export Now" conferences). We are having these regional conferences, (there are nine of them) to focus the travel industries in each of these regions (on these processes of how to work with our system), how to come up with these new tours, and how to come up with new programs that is the focus. Our main focus to get increased travel in the less visited places in the country.

Senator ROCKEFELLER. Senator Trible.

Senator TRIBLE. Thank you, Mr. Chairman.

Mr. Cobb, rarely do I pursue the entire resume that is furnished to us, but I just happened to have yours before me yesterday and I found my way to the political contributions. I note that in 1986 you contributed to Claude Pepper and to Orrin Hatch, along with a number of other people.

What intrigues me, though, is that in 1985 you contributed $2,000 to the Friends of Bob Graham and $2,000 to Re-Elect Paula Hawkins. Now, I fully understand why someone would want to contribute to my friend Bob Graham's campaign. I can also understand why someone would want to contribute to Paula Hawkins' campaign.

But for the life of me, I do not understand why someone would contribute to both in the same year. Can you explain that to me?

Mr. COBB. Senator Graham talked about my role as a civic leader in Florida and involved in a lot of the important issues facing Florida, to be a more modern, dynamic state. And although I have been a registered Republican all of my 15 years in Florida, I found myself involved in a lot of different causes and a lot of different activities that crossed political lines, and found it met my own priorities to quite often make political contributions to other than Republicans.

Senator TRIBLE. What are those priorities?

Mr. COBB. In the case of Bob Graham, I felt that he was a superb Governor to our state for eight years and was a good friend, and was going to be a very good Senator. And so when he asked for a political contribution, I made a decision to support him.

At the same time, as a Republican, when Paula Hawkins asked me for a political contribution I said yes to her, too. And I told both of them, by the way.

Senator TRIBLE. I have one other question and I will let you submit the answer for the record, if you will. I note that you are a member of a number of clubs, on Attachment 3, page 3.

I would like you to submit for the record whether any of those clubs are all-white or all-male.

Mr. COBB. I do not have the answer to that, but I will get that and submit it, sir.

[The following information was subsequently received for the record:]

U.S. DEPARTMENT OF COMMERCE,
U.S. TRAVEL AND TOURISM ADMINISTRATION,
Washington, DC., June 16, 1988.

Senator PAUL TRIBLE,
U.S. Senate,
Washington, DC.

DEAR SENATOR TRIBLE: As you requested at my confirmation hearing, we have checked with all of the nine social clubs and fraternities, where I am presently or have been a member. None have any restrictions regarding race, but two have restrictions against women. One is a social club called the Olympic Club in San Francisco which admits gentlemen only. The other is my college fraternity, Phi Delta Theta, which restricts women but informs us that it is exempt under Title IX.

I have been a member of the San Francisco Olympic Club for over 30 years and disappointed to learn that they have this restriction. If you think it is critical, I am prepared to resign as a member of the Olympic Club. I am no longer active in the Phi Delta Theta fraternity and not sure if it is possible to resign, but I am prepared to do whatever is necessary.

Please let me hear from you. I would be most happy to meet with you to discuss my response to your question if you wish.

Sincerely yours,

CHARLES E. COBB, Jr.,
Acting Under Secretary.

Senator TRIBLE. I thank you, sir.

No further questions, Mr. Chairman.

Senator ROCKEFELLER. Senator Pressler, do you have any further questions?

Senator PRESSLER. I would like to pursue your philosophy of management in terms of working on a fairly limited budget over there with private industry.

Now, a lot of times, the industries that are able to contribute are the biggest ones, the ones that have the big resorts that we have heard about, but the smaller companies, the small businessmen, are not able to contribute because they cannot afford it.

Is there a way that we can mesh this together? I suppose that if the cooperating businesses are the big businesses, like the big resorts, that is where the tourists are going to go. What about the small businessmen in the tourism picture, the small businessmen across the country who have small motels or small restaurants or who are in tourism-related industries? What input will they have?

Mr. COBB. Well, you are correct, that our approach to our private sector partners will be different depending on the business. On our approach to the larger airlines and larger hotel chains, we will want them to be actively involved in some of our cooperative advertising campaigns. You know, for example, that the cooperative advertising campaign between the State of New York and Pan Am to bring tourists to New York is one approach, and there is a cooperative campaign between TWA and Illinois for that state.

But since there are no large advertisers in an area such as your state, Senator, we have, as you know, have had these regional conferences where we have brought our leading executives within USTTA with the state's leading tourism executives. I think you participated in one of those forums. We then devised a tour for your region which focused on all of the attractive features of your region.

We then took that tour and tried to sell it. We were successful in selling it to a German tour operator, and the German tour operator is now going to bring (I forget exactly how many) new tourists. In-

cremental new tourists are going to be brought under that program. We see this as a very successful strategy that creates incremental tourists to all parts of the country, and it does it in a very cost efficient basis. So we plan to continue to do that.

Senator PRESSLER. Are you familiar with the Old West Trails Program?

Mr. COBB. Yes, sir, that was the one I was just referring to.

Senator PRESSLER. What is your feeling about programs of that sort? I mean, are you going to get out across the country and firsthand provide some leadership and presence? Of course, I do not know what your travel budget is. Maybe they have cut it down so much that you can't, but are you going to be visible out across the country in this job?

Mr. COBB. To the extent that I can do so in seven months, yes, sir.

We have those nine regional programs I just talked about. We have already had about four, and we have a couple more during the remaining seven months. I hope to be involved in as many as I can, as my schedule allows.

Senator PRESSLER. Thank you.

Senator ROCKEFELLER. Mr. Cobb, the "Times" of London had an interesting article—and I can't even give you the date of it—but they were trying to find out how efficient various tourist offices were, and they measured some 70 that are in London. And they found that the least responsive was the United States. And it is interesting some of the responses or days taken to reply to a request—and the other criteria was time taken to answer the phone—and I assume they did that relatively scientifically. It is a rather interesting comparison. The United States had averaged eight days to reply, and the phone was simply always busy.

Bulgaria, which is not my particular idea of paradise, answered in their mail four days and they answered their phone in five seconds.

China, with a billion people and a bureaucracy, answered mail requests in six days and they answered the phone in seven seconds.

And Hong Kong, which of course is very geared up on this, answered in five days and answered the phone in three seconds.

Now, those are just some of the samples. In our case we clearly did not meet the muster.

Now, part of that obviously is because some of these programs are being shut down and there is less manpower. But still, being least helpful among the 30 does not speak well for our country.

Where do you see some of the problems that led to that specifically with respect to London or elsewhere? What do you think we can do about it, and how widespread do you think this problem is?

Mr. COBB. The results in London the last few months are not acceptable in my judgment, and so we have to have an improvement. I do not think we were the worst, as you point out. The eight day response was about in the middle. But it is still, in my judgment, unacceptable.

What has happened there (as you stated in your opening comments) is a combination of increased tourism and the depreciation of the dollar. This has given us about one-fifth the number of pounds to invest that we did have per tourist that wants our serv-

ices. So there was this 1985 level of tourism, and we had this 1985 level of dollars, and when the dollar dropped to half and the tourism doubled, and at the same time, we had a slightly decreased budget allocation, it provides about one pound out of the five we had in 1985.

So to operate in that kind of environment, the decision was made that we could not deal with the walk-in consumer any longer. And at that budget level, I think that is a correct decision.

Now, as I indicated——

Senator ROCKEFELLER. If there were more money, you would want to reopen these walk-in offices and staff them correctly?

Mr. COBB. Well, what I would like to pursue first (because I think it is a better strategy) is to do this in conjunction with private industry. There are a number of companies that would like to take the lead in being our partner with these consumer walk-in facilities. To the same extent that we are using TWA or Pan Am as the lead partner in marketing New York or Chicago or Illinois, I think we should deal with a private company as the lead in these information offices.

We have never done that before, but I would like to figure out how we might do that in the next seven months because I think it is the most cost efficient way to do it for our industry, and I think it is the most efficient way to do it for the taxpayer.

Senator ROCKEFELLER. Do you foresee us getting more money for USTTA? Do you have any ideas as to how we might do that?

We have been level-funded for a number of years, and the administration has put up a user-fee concept, as you know, affecting cruise and airline travel which has been strongly resisted within the industry.

Mr. COBB. As I have stated in my statement, the $20 million approximately that would be available from that facilitation fee would be adequate to meet our needs. So we are very hopeful that Congress will pass that recommendation in some form.

Senator ROCKEFELLER. The problem is it meets with such resistance that from a practical standpoint it is probably going to be difficult to pass that particular user fee, and that is what we faced last year and what I think we face again this year.

So do you think there may be other ways?

Mr. COBB. If there are other ways within a similar concept, as I have indicated to you, we would like to work with you and to work with industry, to find modifications or adjustments to that proposal.

Senator ROCKEFELLER. Now, irrespective of our success in that—and I hope and frankly think we will be successful in coming up with a permanent source of funding—the weakening of the dollar obviously has been terrific for getting people over here. But it has been less terrific in terms of marketing our country around the world, particularly when it comes to the type of, I guess it was TWA hooking up with New England and doing advertising in England which clearly had results. You could just measure the results.

What are we going to do about that problem in terms of the marketing through television or other media? We closed down a certain number of walk-in places, but how do you overcome this with promoting and marketing our country overseas?

Mr. COBB. I see the job of USTTA as being a catalyst; in making sure the information is generated, disseminated and is properly received by the customers who are making the decision of where they want to travel for their vacation or their business. As I indicated earlier to Senator Pressler, I think that we need to rethink how that information flows, how we generate the information, how we disseminate it, and how it is received.

The way we have done it in the past is not very efficient. We know for a fact that some customers come to an office and cost us as much as $20. The $20 to service that person, to give him the brochures, to have the expensive rent location on a ground floor location in London or Paris or Tokyo and the personal services are very expensive ways to go for that information process. And that is one of the reasons I want to pursue one of these corporate computer information delivery systems. Then, for example, lets go back to the advertisement that you mentioned. Next, the receiver of that information calls his Pan Am office and somehow plugs into the Pan Am computer.

So I still see us continuing to do the cooperative advertising campaign. Where we are breaking down now and not working as efficiently as I think it should is after the British citizen hears that campaign in London. We are not following up on the delivery. The airlines are doing a pretty good job with the ad, but we have to do a better job with support mechanism.

Senator ROCKEFELLER. My final point is not so much a question but is to reinforce what Senator Pressler said, that I, as Donna Tuttle so strongly exercised her leadership, I really believe in this gateway concept. And I think it makes sense not only for the types of rural states that Senator Pressler and I come from, but I think it is much better for the traveler.

And then of course the question is, and therefore the regional concept of, let's say, the tourist comes to Washington—and obviously that is the first stop—and obviously Washington is going to get the first two or three days as that tourist sees sights in this city. The average tourist knows that they want to see the Washington Monument, the White House, the Congress or whatever, but they don't know what is out there in West Virginia or Pennsylvania, Delaware or Virginia in most cases. So they depend upon what is in the package that they buy, and therefore, what is on the shelf in the package that really settles where people are going to go. And it is therefore important.

The concept of regionalism I think is absolutely fundamental. And I think the concentration on getting those states which are not primary or gateway states, or gateway cities, into that package which the travel agent offers to the overseas traveler is absolutely fundamental. In West Virginia our tourism is growing. It has trebled in the last ten years. It is an inevitability. It is recession-proof.

On the other hand, it could be doing in fact a lot better than it is if it were in some of these packages, and I would just really encourage you to follow that gateway concept, that regional concept. I think it is the strongest approach we have to marketing our entire country. And I think more than that, it is the best chance we have of bringing people back as repeaters, because they will have seen not just the things they have seen in the photographs all the time,

but they will have discovered new experiences which they will like and want to have more of.

And I suspect that you strongly agree with that.

Mr. COBB. I totally agree with that.

Senator ROCKEFELLER. Mr. Cobb, I am grateful to you for your presence here, for your willingness to go into government service, and to continue in government service. You have had an interesting and varied career, and a very potent one, and I think that USTTA is going to be well served by you, and as I indicated at the beginning, I strongly support your nomination.

So I thank you very much for being here, and wish you the best. We will have a markup probably at the end of this month.

Mr. COBB. Thank you very much.

Senator ROCKEFELLER. Thank you, sir.

[The following information was subsequently received for the record:]

PREHEARING QUESTIONS OF THE MAJORITY AND THE ANSWERS

Question. What experience and qualifications make your nomination as Under Secretary of Commerce for Travel and Tourism an excellent one? What tourism-related experience do you have?

Answer. I have over 20 years of top management experiences with several leading real estate, hotel, and resort companies that include The Walt Disney Company, Six Flags Corporation, Arvida Corporation, the Boca Raton Hotel and Club, Sawgrass Resort, Longboat Key Club Resort, Cota de Caza Resort, Rancho California Resort, McCormick Ranch Resort and other resorts. These tourism dependent businesses were all successful primarily because of their strong marketing and promotion capabilities. In addition, my tenure as Assistant Secretary of Trade Development in the Department of Commerce will be beneficial in giving leadership to USTTA's trade development efforts, and to the trade policy issues impacting the travel and tourism trade.

Question. Why do you want to serve as Under Secretary of Commerce for Travel and Tourism? With only seven months left in the current administration, do you think you can have a significant impact on national tourism policy? If so, how will you accomplish this?

Answer. I want to serve as the Under Secretary of Commerce for Travel and Tourism as I believe I am uniquely qualified to give the organization the policy leadership it needs during the remaining months of this Administration, and to assist the Agency in preparing a strategic plan for the new Administration. I believe I can make a significant impact on tourism policies by preparing such a strategic plan, and by improving existing trade development and operational procedures throughout USTTA as discussed in questions 3, 4 and 5.

Question. For several years, the administration proposed eliminating USTTA. Last year, it proposed continuing the Agency and funding it with a 41 user fee on international airline and cruise ship arrivals. For FY 1989, the administration has proposed $11 million for USTTA out of general revenues, with the user fee supporting the agency in the outyears.

Can this Committee, therefore, conclude that the administration is slowly accepting the notion that USTTA serves a useful purpose and should be funded out of general revenues?

Answer. In my judgment the Administration has accepted the notion that USTTA serves a very useful purpose in increasing travel and tourism revenues and that the investment in USTTA earns a very high return on taxpayer funds. However, given the many demands on the limited taxpayer funds, the Administration has proposed that USTTA be funded by a facilitation fee.

Question. How do you feel? Do you agree with the Congress (as expressed in the National Tourism Policy Act) that government has an important role to play in the development of a strong international tourism marketing program?

Answer. I believe that the United States Government has a very important role to play in the development of a strong international tourism marketing program. In my judgment, that role is one of being a catalyst. It is a role of leadership in bringing the industry together to focus on and to solve the key marketing problems. It is

a role of organizing the industry into cooperative advertising campaigns, cooperative tours and cooperative information offices. By being a catalyst, the Government will provide a small percentage of the funds, while the larger percentage will come from the industry that benefits from this Government leadership.

Question. Does USTTA currently receive the level of funding necessary to accomplish its mission? If not, how much more do you feel is necessary for the agency to do its job well?

Answer. In my judgment the $11 million proposed in 1989 will enable USTTA to meet its minimum needs, but this level of funding does not permit USTTA to implement its complete mission and to be fully competitive in the world marketplace. The funds received from the Administration's facilitation fee proposal will enable the Agency to do its job much better than the $11 million level.

Question. During the past two years, USTTA has adjusted its approach to international marketing—from a system of largely self-generated programs to one which aims to encourage the private sector to increase its international promotional activities. Do you believe this approach has been successful, especially in light of USTTA's limited budget? Will "cooperative advertising" continue to be at the forefront of USTTA's marketing program if you are confirmed?

Answer. Yes, I believe that all of USTTA's cooperative programs that require private sector participation have been successful, including the cooperative advertising program. As mentioned in the answer to question 5, I see the cooperative programs being expanded to include cooperative information offices and other public/private trade development efforts.

Question. As you know, USTTA has recently closed its walk-in offices overseas. Yet, with the fall of the dollar, inquiries from prospective tourists in these overseas locations have set new records. We understand that USTTA has not been able to adequately service requests for information about travel to the United States, particularly in the London office. What will it take to bolster our overseas operations so that they can at least be responsive to mail and telephone inquiries? How can other agencies and departments in our government be of help?

Answer. A high priority of USTTA during the next seven months will be to organize an information office in London and possibly in other cities which will be jointly financed by private tourism interests, State Governments, and the USTTA. At the same time, we seek to open these cooperative information offices, I would like to see the USTTA operational offices moved into the Embassies, American Consulate offices, or into less expensive office space. We are in the process of moving to less expensive or embassy locations in London, Paris, Toronto and Frankfurt.

POSTHEARING QUESTIONS OF SENATOR PRESSLER AND THE ANSWERS

Question. 1. What has been your international travel activity in recent years? During those travel experiences, have you been able to forge working relationships in the domestic and international travel industry that would assist in your efforts at USTTA to promote the interests of the U.S. travel industry.

Answer. During the last 20 years I have held top executive and general management positions in several travel and tourism companies. They included The Walt Disney Company where I was a Chairman and Chief Executive Officer of two subsidiaries which are Disney Development Company and Arvida Corporation. In addition, I was on the Board of Directors and the Executive Committee of The Walt Disney Company. Prior to my Disney experience, I was the Group President of the Penn Central group of resort, hotel and amusement companies. These included Six Flags Company which is the second largest amusement company in the United States to The Walt Disney Company. It also included Arvida which owned such resorts as Boca Raton Hotel and Club, Longboat Key Club Resort, and the Sawgrass Resort. I also had the responsibility for Great Southwest Corporation which owned Cota de Caza Resort and the Greenhouse. Prior to these experiences I was in charge of the resort and community development activities of Kaiser Aetna, which owned the McCormick Ranch Resort in Scottsdale, Arizona, Rancho California in Southern California and other resorts.

These general management experiences provided me contacts with airline, hotel, and other tourism and resort executives throughout the world.

In my judgment, this extensive business experience and my tenure as Assistant Secretary of Trade Development will prove invaluable to me in leading U.S. efforts to promote travel and tourism in the United States.

Question 2. I contacted the Secretary of the Treasury to express my deep concern regarding the recent authorization of American citizens to travel to Vietnam but

denying the accompanying assistance and participation of the U.S. travel industry. It is my understanding that officials of the Commerce Department have expressed similar concerns. The USTTA also has taken the opportunity to address this issue at a forthcoming meeting of the inter-agency Tourism Policy Council. How will you address this issue? What priority do you intend to give this issue? Are you prepared to assist my office and the U.S. tourism industry in seeking a satisfactory resolution of this matter?

Answer. You are correct that we in the Commerce Department have expressed concern to the Treasury Department that the U.S. travel industry is being denied full participation in helping U.S. citizens travel to Vietnam.

You are also correct that we have put this issue on the agenda for the August 31 meeting of the Tourism Policy Council at which time we expect an official from the Treasury Department to give us a report on how the Treasury Department might be of assistance to the U.S. travel industry. We will invite your office and others who have expressed an interest in this issue to participate in the Tourism Policy Council meeting.

I have discussed your request and your May 18 letter to Secretary Baker with Mark Sullivan, the General Counsel of the Treasury Department. Mr. Sullivan plans to look into this matter and to determine who might represent the Treasury Department at the August 31 meeting.

Your question of priority on this issue is a difficult one. USTTA's primary mission under the National Tourism Policy Act is to increase U.S. export earnings through trade in tourism. Within that context, the Agency is prepared to assist you and your office to seek a satisfactory solution to this matter to the extent our resources and our authority will allow.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. Senator Durenberger has come and gone. He is coming right back.

The committee now turns to the nomination of Wendy DeMocker to be Assistant Secretary of Transportation for Public Affairs. Ms. DeMocker has great experience in press relations, both at the Department of Transportation and here in the United States Senate. She currently serves as Press Secretary to Secretary Burnley.

Her experience is appropriate for a post which is very important, especially during these times when communicating through the mass media has become such a crucial part of government's responsibilities. We do not do it very well, but we need to. The Department itself is a highly controversial department in the sense of the types of functions that it has to oversee. It has many responsibilities which require effective communication. I am trying to think back of the battle that was held in the Senate, in the Congress, indeed, over the airports, and that is the turning loose of Dulles and National from the Department of Transportation's responsibility. The Secretaries were spending as much as 25 percent of their time on overseeing different problems of airports.

But that became very, very controversial, and there was a lot of misinformation which was wandering around. It was felt by some that it would ruin the Baltimore-Washington International Airport and of course, I think it is quite the reverse. I think this area has plenty of room for three. But nevertheless, there was a lot of doubt in the minds of the public, and certainly in the minds of the Senators, as a result of this.

You have issues of safety and consumer awareness, all of which are difficult.

So I am concerned about the lack of continuity in this post, Ms. DeMocker. The position became one requiring Senate confirmation only about five years ago. Ms. DeMocker stands to become the

fourth Assistant Secretary for Public Affairs confirmed by this committee since that time. Now, that is not your fault, but it is a matter of concern I think to us so that I hope that we can see this one through and keep it.

So I welcome your opening statement, but not until you have been properly presented by your distinguished Senator, Senator Durenberger, for whom I have great, great affection and regard. I have always said that I think Dave Durenberger on issues of health and many other areas, he and I serve together on the Finance Committee, is a genuine asset in the United States Senate, and I think Minnesotans are lucky to have him.

STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM MINNESOTA

Senator DURENBERGER. Thank you for the generosity of that introduction.

Senator ROCKEFELLER. This being an election year, I hope you will not publicize that back in Minnesota. But it is the way I feel.

Senator DURENBERGER. Fortunately, I am not running against your brother-in-law this year.

There is something always unique about a session like this, when we are talking about issues which are national in scope, and yet they draw on kind of the best in America. And I often, when I go out in rural parts in my state—and you represent a state, and so does Larry, which is almost totally rural.

I recall for people that nobody ever heard of Dixon, Illinois, until Ronald Reagan became President, or Plains, Georgia, or a whole lot of really little places in this country.

And it always strikes me that some of the best of this country is not the obvious. And a Rockefeller from West Virginia would not be obvious to anyone.

And I think in this case, Wendy DeMocker coming off the iron range of Minnesota, one, she does not look like an iron ranger, which was a big problem for the four years that she was assistant press secretary and press secretary on my staff, because she just sort of looked like she could not be from White Lakes, which is a little mining town up on the east end of the Mesabi Range.

But she is and she was. And I think like people from Plains and Dixon and White Lakes and in my case Collegeville, and Larry's, this little town that he is from, nobody ever forgets those sort of things.

So I think in the context of your remonstrations to the people in power in general in this country, the best way I could introduce Ms. DeMocker is to tell you that she came to work for me in 1980 from journalism school at the University of Minnesota.

We met in the transportation facility, as I recall, Northwest Airlines, where I did my interviewing in between something else. She spent the next four years on my staff traveling the railroads, as we were saving rural railroads, Larry and I, and those little railroads out to South Dakota. And this is the person who was deeply involved in that, traipsing over the trails as we sought to save a variety of other transportation systems in the rural parts of our state.

And then when John Riley left my staff to become Federal Railway Administrator, Wendy went with him, broadened her base a little bit with marriage, but really never in my opinion, from the frequency of our contacts, never really lost her sense of roots or the sense of significance of the opportunity with which she was being presented in the Department of Transportation.

So I think the Secretary—and the Secretary talked to me when he made the decision. The Secretary is very committed to making this office work.

And I am here just in case anybody has these old notions that this may be just another pretty face or that sort of thing, that I had to put up with in Minnesota in the beginning with the Kelly Herstads and some of the rest of my volunteers up in the rural parts of the state.

Just in case there were any notion out there, I wanted to tell you from eight years of experience that you can put that away, and this is a person who is incredibly committed to her country and to this opportunity to help make policy and implement policy in this country.

I think she will be a great asset to this Secretary and to those of you who care about the public affairs function at the Department of Transportation. So it is my privilege and pleasure to recommend Ms. DeMocker to all of you.

Senator ROCKEFELLER. Great. Thank you very much, Senator Durenberger.

And we look forward to your statement.

I will include your biographical sketch in the record at this point.

[The biographical sketch follows:]

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN
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United States Senate

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

WASHINGTON, DC 20510-6125

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

(If more space is needed, please use attached REMARKS sheet)

A. BIOGRAPHICAL DATA

1. Name: DeMocker (Last) Wendy (First) Monson (Other)

Address: 10505 Oakton Ridge Court (Current residence) Oakton, Virginia 22124

400 7th Street, S.W. (Business) Washington, D.C. 20590

2. Position to which nominated: Assistant Secretary for Public Affairs Dept of Transportation Date of nomination:

3. Date of birth: 10 (month) 4 (day) 57 (year) Place of birth: Virginia, Minnesota

4. Marital status: Married Full name of Spouse: James Edward DeMocker

5. Names and ages of children: None

6. Education:

Institution	Dates attended	Degrees received	Dates of degrees
Aurora-Hoyt Lakes High School	1969-75	H.S. Diploma	6-75
Mankato State University	1975-77		
University of Minnesota	1977-79	B.A. Degree	6-79

7. Employment record: List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

From	To	Name of employer	Address	Type of work
1/88	Present	OST/Dept. of Transportation	400 7th St. SW Washington, D.C.	Press Secretary to the Secretary
12/83	1/88	Federal Railroad Admin. Dept. of Transportation	400 7th St. SW Washington, D.C.	Director of Public Affairs
3/80	12/83	U.S. Senate Sen. Dave Durenberger	375 Russell Bldg Washington, D.C.	Asst. Press Secretary
1/80	3/80	Best Temporaries	Minneapolis, MN	Clerical
4/79	1/80	WTCN Television	Minneapolis, MN	Dispatcher

8. Government experience: List any experience in or direct association with Federal, State, or local governments including any advisory, consultative, honorary or other part-time service or positions.

1/88 to Present	OST/Dept. of Transportation	400 7th St. SW Washington, D.C.	Press Secretary to the Secretary
12/83 to 1/88	FRA/Dept. of Transportation	400 7th St. SW Washington, D.C.	Director of Public Affairs
3/80 to 12/83	U.S. Senate Senator Dave Durenberger	375 Russell Bldg. Washington, D.C.	Asst. Press Secretary

10. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, charitable, and other organizations.

College Sorority-Alpha Gamma Delta - Recording Secretary

U.S. Senate Press Secretaries Association

11. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

1986: Outstanding Performance Evaluation

1987: Outstanding Performance Evaluation

STATEMENT OF WENDY MONSON DeMOCKER

Ms. DeMocker. Thank you very much. Thank you, Senator Durenberger.

I am honored to appear before you today as President Reagan's nominee for Assistant Secretary for Public Affairs of the Department of Transportation. My statement is very brief and then I will answer any questions you might have.

I have been involved in media relations at the legislative and the Federal—and the executive branches of the Federal government for eight years now. Senator Durenberger gave me my very first job, hiring me in an airport conference room eight years ago, and I did serve him for four years.

And then I was director of public affairs at the Federal Railroad Administration for the next four years. I have served Secretary Burnley as his press secretary since January, which has given me an opportunity to work on some of our important aviation safety issues, the drug abuse issues in transportation, our new zero tolerance issue in the Coast Guard.

And I have also had an opportunity to interact with other Departments and agencies and the heads of our agencies within the Department of Transportation, as well as the White House.

And if confirmed, I look forward to working with the members of your staffs and my public affairs staff to be and Secretary Burnley in communicating these issues that we are working on right now for the next seven months to the public through the news media.

Thank you.

[The statement follows:]

Statement of Wendy M. DeMocker

Thank you, Mr. Chairman. I am honored to appear before you today as President Reagan's nominee for Assistant Secretary for Public Affairs at the Department of Transportation. I would like to read a brief statement and then will be happy to answer your questions.

My background in public affairs in the government gives me a strong foundation of experience for the position for which I have been nominated. I have been involved in media relations at the legislative and executive branch levels of the federal government for the past 8 years. I was assistant press secretary to Senator Dave Durenberger for four years, then served as Director of Public Affairs for the Federal Railroad Administration. During my tenure at the FRA, I was charged with management duties as well as relations with the press and the public.

I have been serving as Press Secretary to Secretary Burnley since January of this year. I have had the opportunity to become involved with the issues and to work with Secretary Burnley, the modal administrators and the Department's public affairs staff. This has been an exciting challenge—particularly since transportation has such a direct and important bearing on every American. The Assistant Secretary for Public Affairs is key to communicating the issues to the media and the public.

That means not only working with the news media to inform the public, but working with the Congress, and other departments and agencies in the Executive branch to help the public know and understand the issues that affect them.

This concludes my statement, and I will be happy to answer your questions.

Senator Rockefeller. Very good.

Senator Pressler, do you have any questions?

Senator Pressler. No. I support this nominee and I think we are very lucky. She comes very highly recommended from my colleague. I will support anyone Senator Durenberger recommends without question.

Senator ROCKEFELLER. Well, that is straightforward.

Ms. DEMOCKER. I say to you, Senator Rockefeller, I will be there until the last day.

Senator ROCKEFELLER. How would you judge—and this is a general question, but how would you judge the state of public affairs communication out of the Department of Transportation these days?

How would you critique it? What are its strengths and weaknesses?

Ms. DEMOCKER. Just generally, public affairs, interacting with the media, not so much within the Department?

Senator ROCKEFELLER. Correct.

Ms. DEMOCKER. Well, it has become ever more a pretty sticky business, I think. I think that in the government we rely probably more and more on the news media to tell us what people are thinking and how our issues are being received out there, you know, in ways that we might not see within the Department.

But generally I think that it is a very good—I think we have a very good, within the government, a very good public affairs system, and I think we do a really good job of keeping the public informed of everything we are doing, certainly at the Department.

Senator ROCKEFELLER. How does it work now when you have, let us say, an airplane crash or a derailment? It is human nature for people to not point the finger at themselves. That is just the way the world works.

If confirmed—as I am sure you will be—you have to make some judgments based, very quickly, based upon insufficient knowledge, because the media wants to have something immediately for the noon news or the 6:00 o'clock news.

They have to have it immediately. And you cannot get into the business of saying, "Well, we have to wait until all the facts are in." The media is hungry for information. And if you say, "We have to wait for all the facts to come in," that is responsible. But does not satisfy the media, which then will often draw from that a negative conclusion or will say that the Department of Transportation is not responsive or is acting as government agencies always do.

What is a balance when you have a crisis of that sort? How do you handle something like that?

Ms. DEMOCKER. We try very hard, especially immediately after an accident, such as a train accident—and I was in Chase, Maryland, a year and a half ago after the Amtrak-Conrail accident, and there was a lot of press there. And there was a lot of pressure right away to provide information.

But we basically just explained the process to them, that we have investigators on the scene, that we certainly cannot make any determinations as to what caused an accident, because they really take months to investigate, and information trickles out very slowly as pieces are put together.

And at the Department, we have really tried to just explain the process to reporters, that this is how an investigation is conducted, this is what we do. When we know we have concrete evidence or that we can rule something out, to immediately dispel rumors we

will say we know it is not this, you know, but we are still looking at a variety of other areas.

The National Transportation Safety Board investigates all the major accidents and actually they do conduct press briefings on the scene every day. And so really, after an accident it is not so much the Department of Transportation that provides the details of what has been going on in that accident, but the National Transportation Safety Board through their daily press briefings.

And then we in turn off that press briefing get a lot of phone calls asking us to explain various things that the National Transportation Safety Board may have revealed—you know, how does this rulemaking work or, you know, why do we not have a certain rulemaking in a safety area.

So that is really more our role than providing a lot of details as to what happened in the accident, really, until it is thoroughly investigated and over.

Senator ROCKEFELLER. What is an example of a tough public affairs matter that you got into with respect to the Department of Transportation, where the press was hostile or pushing or demanding immediate answers? Looking back at the recent months or years, what was one of the tougher things that you had to deal with?

Ms. DEMOCKER. First of all, I would say generally, on one issue right now—well, it would be the Conrail Chase accident, where there was a lot of pressure on us every single day.

The reporters wanted really a news story every single day out of that accident, and when the drug tests revealed later the presence of marijuana in the brakeman and the engineer, we had a frenzy of reporters around the Department that day. And we had to come out with that information really in as careful and straightforward a way as possible, and not interpret.

There was a lot of pressure on us to interpret the level of impairment of the engineer and the brakeman, which we could not do because we are not experts in that area. We can just provide the data.

And despite that, there was a lot of pressure on the Department to interpret the results, the level of impairment that Ricky Gates may have been under at that time. That was a difficult situation.

But generally, we have some issues that are very complicated, such as the future Federal role in aviation and should air traffic control be broken out of the FAA and set up as a separate entity. And those things are very difficult to explain.

They are very—they can sound very bureaucratic to explain them to reporters, but they very much have an impact on aviation safety. And it is sometimes hard to get a reporter to be interested in, you know, the future of the FAA and should we take air traffic control out of the FAA so that we can hire air traffic controllers faster out of the civil service process and get equipment faster out of the procurement process.

But it is very difficult to sometimes get reporters to pay as much attention to that as an accident.

Senator ROCKEFELLER. Senator Pressler, do you have any further questions?

Senator PRESSLER. No.

Senator ROCKEFELLER. I do not, either. I think you are going to be excellent. I think you are going to be confirmed easily. You will certainly have my vote, and I think you bring a lot of experience and good solid professional judgment to this.

So I thank you very much, Ms. DeMocker, and also obviously Senator Durenberger.

[Whereupon, at 10:35 a.m., the committee was adjourned.]

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